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COMMISSION ON HUMAN RIGHTS
Intergovernmental working group of experts
on human rights of migrants
Third session
Geneva, 23 - 27 November 1998

INFORMATION AND COMMENTS RECEIVED FROM GOVERNMENTS, UNITED NATIONS BODIES, SPECIALIZED AGENCIES, INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS

Report of the Secretary-General

ANNEX

Submission from the Government of the Federal Republic of Yugoslavia
dated 9 February 1998

GE.98 - 13116

The Permanent Mission of the Federal Republic of Yugoslavia to the United Nations Office and other International Organizations presents its compliments to the Secretary-General of the United Nations and, with reference to his Note G/GO 212/26(1), of December 2, 1997, has the honour to transmit, enclosed herewith, the replies of the Government of the Federal Republic of Yugoslavia to the Questionnaire concerning the Commission on Human Rights resolution 1997/15 of April 3, 1997, entitled "Migrants and human rights".

The Permanent Mission of the FR of Yugoslavia avails itself of this opportunity to renew to the United Nations Secretary General the assurances of its highest consideration.

Geneva, February 9, 1998.

REPLIES TO THE QUESTIONNAIRE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS ON THE HUMAN RIGHTS OF MIGRANTS

Question 1

1. The Yugoslav territory has been an emigration area for decades. The Yugoslav out-migrations, the main form being migration for employment, have been predominantly aimed at the western European countries and also in the past few years, to a larger extent, at overseas countries.

According to the preliminary data of the Yugoslav Federal Office of Statistics, the total population of FR Yugoslavia amounted to 10.574 million in 1996. According to the data from available sources, about 1.5 million Yugoslav migrants with members of their families (pursuant to the questionnaire definition) are estimated to be living and working abroad in 1997, the largest number being in FR Germany, Switzerland, Austria, France, etc. The reliability of these estimates is largely subject to the fact that in the past few years the Yugoslav competent services have not had practically any access to foreign migration statistics; likewise, it is even more unknown how Yugoslav citizens who retained only Yugoslav citizenship or have dual citizenship in the country of immigration are statistically covered nor in what way migrations from FR Yugoslavia are distinguished from the ones from other states that have been created in the territory of former Yugoslavia.

2. Though FR Yugoslavia is not a country of immigration, employment of foreigners in FRY is regulated by the Law on Conditions for the Establishment of Empioyment Relationship with Foreign Citizens.

In accordance with the Law on Movement and Residence of Foreigners, foreigners are given permission to temporary residence in FR Yugoslavia on the basis of their employment therein. On that basis, 1,533 foreigners were permitted temporary residence in 1997.

Pursuant to the Yugoslav legislation, with a view to preventing illegal migrations via the territory of FR Yugoslavia, the competent Yugoslav authorities are taking measures to prevent illegal migrations from underdeveloped countries to economically more developed countries. Thus, illegal entry of about 300 foreigners was thwarted in 1997. In addition, due to the failure to possess the funds, return tickets, third-country visas, etc., about 20,000 foreigners were denied entry into FR Yugoslavia in 1997, mainly from the African, Asian and other countries of emigration for whom there was reasonable doubt of using the territory of FR Yugoslavia as transit for illegal departure for more developed countries of immigration.

Question 2

1. As early as the beginning of 1970s, along with the intensification of outgoing migratory flows and the establishment of the Yugoslav migrants' population with its specific needs and characteristics, the Yugoslav foreign migrations policy had been devised and its basic principles defined, on which the policy of foreign migrations of FR Yugoslavia, inaugurated in 1995, is also based. Accordingly, the approach to the protection and exercise of the rights of migrants that are governed by national legislation, including the right to information, education, provision of direct assistance and services, etc. has been devised on those principles.

1.1. Within the framework of the Yugoslav national legislation, the Law on Mediation for Employment of Yugoslav Citizens Abroad was past in 1972, as the first in the series, replaced immediately in the following year by the Law on Conditions for Temporary Employment and Protection of Yugoslav Citizens Working Abroad, and in 1980 by The Law on the Protection of the Citizens of SFR Yugoslavia Working Temporarily Abroad was adopted and is still in force, the updating of which being under way.

The Law on the Protection of the Citizens of SFR Yugoslavia regulates all forms of employment with foreign employers and going away for work

abroad on the basis of economic, scientific-technical and other forms of co-operation with foreign partners as well as forms of protection of the citizens and their families that are involved in those processes. The protection is understood in the broadest sense and includes forms and ways of implementing protection as statutory obligation: obtaining work and residence permits and provision of information on conditions of work and residence in the country of employment, equal treatment with national workers, health, pension, disability and unemployment insurance, health care of members of the family, children's allowances, safety at work, accommodation and food, protection before courts and transfer of savings. In addition, the Law lays down forms of protection that are provided in accordance with conditions, requirements and possibilities : pre-school and other education both within the system of the country of immigration and in the mother tongue, social, cultural, recreational life and information, and the creation of conditions for return and reintegration upon return.

The adoption and implementation of national legislation in other spheres, such as: citizenship, passports, foreign trade, tariffs, etc. are also of relevance for the process of external migrations and the protection of the rights of migrants.

1.2. Education of Yugoslav migrants, and more specifically upbringing and education of children and youth through supplementary instructions in their mother tongue with a view to the preservation of the national identity, fostering of culture and ties with the country of origin, started in an organised way as far back as 1970. It was brought into effect in pursuance of the national legislation and relevant international instruments. This sort of education was organised depending on the political and legislative approach of the receiving countries, accompanied by the recruitment of teachers from Yugoslavia and considerable funds being earmarked by it for financing their work and preparation of textbooks and teaching aids.

1.3. Information in the mother tongue on developments in the country of origin and abroad and on topics of special interest has been provided for a number of years by Yugoslav dailies, periodicals and specialised magazines, radio and TV programmes, video cassettes, etc.

For the purpose of the implementation of direct protection of the rights of Yugoslav migrants at all stages of the migratory process, the competent Yugoslav authorities have on their own or in co-operation with the competent foreign authorities, prepared and published special information material (publications, leaflets and information sheets) either in the mother tongue or bilingual.

1.4. One of the measures that have been taken at the Yugoslav national level for the promotion of the protection of the rights of migrants is both professional and material assistance forwarded from Yugoslavia to associations of Yugoslav migrants abroad, by the establishment of which their right to association for the protection of their own interests is exercised. The scope of work of more than 700 associations is versatile and includes cultural, entertaining, sports, recreational and other activities of interest for life and work of Yugoslav migrants and for cherishing national culture, mother tongue and multiple ties with the homeland, including as of recently humanitarian activities. Immigration countries have also, to varying degrees, participated in the provision of material and financial support to activities of migrants' associations.

1.5. Provision of assistance and services to migrants in the course of the migration process is governed by the national legislation and bilateral agreements and other arrangements.

Within the framework of the institutional network at the national level, a number of government bodies and organisations is involved in the provision of assistance and services to Yugoslav migrants. Attached to the Federal Ministry of Labour, Health and Social Policy, specialised institutions have been established - Federal Institute for Labour Market and Migrations (former Federal Employment Bureau) and Federal Institute for Social Security. These

institutions are, inter alia, responsible for the provision of assistance and services in the field of information on employment opportunities and the exercise of the labour and social rights abroad, reintegration in the country of origin, provision of services for organised employment abroad, the exercise of rights in virtue of health, pension, disability and unemployment insurance, vocational training of migrants, provision of expert assistance to associations of Yugoslav migrants, etc.

The key role in the provision of assistance and services to Yugoslav migrants during their work and stay abroad is played by diplomatic and consular missions of FR Yugoslavia, under numerous bilateral and multilateral instruments in the field of the consular protection ratified by Yugoslavia.

Provision of services and assistance by social counsellors who were either sent from Yugoslavia or recruited from among the migrants, on the basis of co-operation with the competent bodies and organisations for social work and specialised institutions in the countries of immigration, was also of relevance for the exercise of the rights of Yugoslav migrants during their stay abroad.

2. Yugoslavia, as an original member of the United Nations Organisation, has become the party to the majority of basic instruments on human rights, adopted within the UN system, and enumerated in the Commission on Human Rights resolution 1997/15. Similarly, as the country of emigration, Yugoslavia played an active part in and gave its contribution to the preparation and adoption of relevant international documents on the protection of the rights of migrants within the framework of the United Nations, ILO and other international and regional organisations.

3. Considerable role is also played in the exercise of the rights of migrants by numerous bilateral instruments concluded between the governments and other bodies .

3.1. In the period 1965 - 1970 employment agreements were concluded with 7 western European countries and one overseas country. In accordance with these agreements, accompanying administrative arrangements were made, joint commissions were established and were in operation along with liaison bodies for their implementation.

The agreements provided a sufficient formal and legal basis for a relatively favourable treatment of Yugoslav migrants with regard to the rights contained therein and a framework for the exercise of some other rights of a broader interest to their overall status and the status of members of their families (social gatherings, cultural, entertaining, sports activities, information in their mother tongue, instruction in their mother tongue, vocational education, return and reintegration). However, despite actual co-operation with regard to the exercise of a broader range of rights, all requests of the Yugoslav side to regulate them also formally by updating the existing agreements were not accepted by the competent authorities of the countries of immigration.

In countries with which bilateral agreements on employment were not concluded, the competent Yugoslav institution concluded with employers or their associations general contracts on conditions of and procedures for employment, regulating thereby basic forms of protection and other rights of migrants.

In addition to the bilateral agreement on employment, Yugoslavia concluded with FR Germany the Agreement on sending workers from organisations of associated labour from Yugoslavia and their employment in FR Germany under a contract on execution of projects.

The basis for the engagement of Yugoslav citizens within the framework of the scientific and technical co-operation are agreements reached with many countries and international organisations.

3.2. With a view to protecting the rights of its migrants, Yugoslavia concluded 19 bilateral agreements on social security.

These agreements, based on provisions of the international law, ensure specifically the continuity in the exercise of rights, preservation of acquired rights and the possibility to exercise rights in the territories of both countries, including the transfer of cash benefits. For the purpose of the application of the agreements, appropriate arrangements were concluded and the procedure for work of liaison bodies and insurance carriers established. Thus the Convention on Social Security with Austria provides, on principles of reciprocity, for unemployment insurance while this issue was settled by a special agreement with FR Germany.

3.3. The right to preserve and foster the national culture and mother tongue and to maintain connections with the country of origin were also the subject of special agreements and other arrangements.

Conditions and facilities for upbringing and education in the mother tongue were laid down by bilateral agreements on cultural and educational co-operation along with special programmes of cultural and educational co-operation and jointly drawn up relevant documents that were concluded by Yugoslavia with a number of countries.

Yugoslavia is also party to 7 multilateral and 14 bilateral agreements on the recognition of diplomas conducive to the equal treatment of schooling attainments of Yugoslav migrants.

The right to receive information in the mother tongue on opportunities for employment and procedures therefor, conditions of work, etc. has been ensured by the conclusion of arrangements and other forms of agreement with the competent authorities of the country of immigration.

3.4. International arrangements for co-operation of non-governmental organisations were also of relevance for the exercise of the rights of Yugoslav migrants during their work and stay abroad.

3.5. The rights related to the return to the country of origin belong to those rights in respect of which relatively modest basis was created for bilateral and multilateral cc-operation. Concrete arrangements concerning the

return and reintegration of returnees Yugoslavia made only with the Netherlands, FR Germany, France and the Fund for Reintegration of the Council of Europe.

Question 3

1. As far as the exercise of the rights of foreigners in FR Yugoslavia is concerned, no cases or complaints whatsoever involving discrimination on any basis with regard to their rights have been reported. Likewise, there were no cases of collective - mass expulsions of foreigners from FR Yugoslavia.

2. As for Yugoslav migrants abroad, it should be stressed that owing to the development of the national legislation, an active part of Yugoslavia in international bodies and instruments, and developed bilateral co-operation, a solid legal basis was created for Yugoslav migrations, as a part of the global process of international migrations, to take place in a regular way and to achieve, for a considerable period of time, a relatively satisfactory status of the majority of Yugoslav migrants from the viewpoint of the implementation of their human rights.

However, due to the international sanctions, FR Yugoslavia has been denied access to international organisations and meetings while the countries of immigration have unilaterally interrupted the application of international agreements and forms of co-operation provided for in them which has had negative effects in all the spheres of either direct or indirect interest to migrations and the exercise of the rights of Yugoslav migrants at all stages of the migratory process.

In conditions of the crisis in the territory of former Yugoslavia and the civil war, caused by the secessionist policy of former Yugoslav republics, and the sanctions perpetrated against FR Yugoslavia, the Yugoslav migrants, by the very fact of being the nationals of the country under sanctions, suffered the effects of denigration and of depicting, through propaganda, the Serb and Montenegrin people as a disruptive people. In practice, this assumed different

forms of discrimination regarding the rights acquired on the basis of work and residence to such an extent that meant in fact violation of human rights. They were exposed, inter alia, to intensified police control and such measures as search of apartments, business premises, clubs and associations, politically biased legal proceedings and even pronouncing of verdicts on the basis of accusations and testimonies of citizens of other nationalities.

More often, certain forms of discrimination to which Yugoslav migrants had already been exposed as citizens of the so-called third countries, occurred. They materialised in the following: in case Yugoslav migrants lost their employment, they could find another employment with difficulty and were exposed to the danger of loosing their work and residence permits, often due to the abuse of discretionary rights on the part of the competent local authorities; priority was given in taking up new employment even to other migrants from the third countries; by tightening visa requirements for FRY, the exercise of the right to family reunion and communication with members of the family in the country of origin were made more difficult; requirements for registration of associations of Yugoslav migrants became more stringent and subsidies of the receiving countries for their activities were denied or discontinued.

2.1. Lack of the application of bilateral agreements in conditions of a continued trend of outflow of labour from Yugoslavia has had as a result that the process has been taking place in an unorganised way, past the Yugoslav competent authorities, and from the standpoint of the receiving countries, often illegally. This has led to the situation that the structure of outgoing flows has become unfavourable as regards the Yugoslav labour market and development of the country, in view of a high proportion of the young and highly qualified persons in whom the countries of immigration continue to have interest and who are provided with direct assistance for employment in their respective territories by their diplomatic missions in FR Yugoslavia.

By the very fact that employment is mainly taking place irregularly and in the absence of application of the agreed forms of co-operation of competent authorities, one of the basic rights is often, in the very beginning of the

migratory process called into question - the right to proper information on conditions of employment and work, the rights and obligations deriving from work and residence in the receiving country and to appropriate protection and exposes potential migrants to high expenditures and other risks.

2.2 A graver form of discrimination and threatening of human rights represent measures aimed at endangering work or residence permits of migrants owing to their activity in lending support to FR Yugoslavia within the framework of the associations or clubs of migrants or in trade union and political organisations of the receiving country.

2.3 Examples of a systematic discrimination on national basis against the children of Serbian and Montenegrin nationality with respect to education in the mother tongue have been noted. Thus, individual countries took a decision to suspend instruction in the mother tongue for these children or discontinued subsidies for the organisation of the instruction of the mother tongue and culture only for them and by decisions of their governments made requisition of textbooks and books from FR Yugoslavia impossible.

Though these restrictive measures have been in the meantime revoked, they have had serious effects on the exercise of the rights of children of Yugoslav migrants to education in their mother tongue, the quality and coverage of children by the instruction in the mother tongue.

2.4 Owing to the severance of financial transactions with FR Yugoslavia, the majority of receiving countries withheld for a considerable period of time the right to the transfer of pensions and other welfare benefits and savings to Yugoslavia. This resulted not only in extremely negative effects on material and social status of the beneficiaries of these benefits and/or members of their families living in Yugoslavia but by instructing Yugoslav citizens to exercise the right in a foreign territory brought about the problems of obtaining visas and of travelling expenses. The exercise of the right was in certain cases accompanied by the limitation of the amount that may be taken out. In addition, inability to exercise the mentioned rights adversely affected decisions of migrants to return to FR Yugoslavia.

2.5 As one of the forms of discrimination practised against migrants in individual countries, affecting Yugoslav migrants as well, that may be singled out are various administrative and other measures aimed at substituting positive processes of integration by selective integration, mostly to the detriment of the elderly, unemployed and diseased migrants, and by forced and accelerated assimilation having a direct reflection on the possibility of free choice of one's own living and working prospects. The measures of forced assimilation are particularly aimed at younger generations narrowing thereby their opportunities for learning the mother tongue and fostering the national culture as illustrated in point 2.3.

Question 4

The ILO Convention concerning Migration for Employment (Revised), 1949 (No.97) was signed by Yugoslavia on July 1, 1949 and ratified on February 27, 1968. Yugoslavia also ratified Annexes 1 and 2 and excluded, by a declaration appended to its ratification, Annex 3 from its ratification.

The Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (No. 143) was signed by Yugoslavia on June 24, 1975 and ratified on November 26, 1980.

As far as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in the ratification of which FR Yugoslavia is very much interested, witnessed by the fact that it was among the first to support its adoption and took an active part in all stages of its drafting, Yugoslavia as early as 1991 instituted the procedure for its ratification. Unfortunately, the procedure was interrupted due to reasons that were beyond influence of FR Yugoslavia - the crisis in the territory of former Yugoslavia, disintegration of former SFRY owing to forced secession of former Yugoslav republics, the sanctions imposed by the Security Council of the United Nations against FRY and preventing FRY from taking full-fledged participation in the proceedings of the main bodies of the United Nations and international organisations.

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Report of the Secretary-General

ANNEX

Submissions from the Government of Denmark
dated 13 and 20 February 1998

GE.98 - 13113

February, 13 1998

Questionnaire on human rights of migrants.

Sir/Madam,

Referring to the Secretary-General's note G/SO 212/26(1) of 2 December 1997 the Ministry of Foreign Affairs is pleased to forward information regarding question no. 1.

Regarding questions no. 2 and 3 the Ministry of Foreign Affairs kindly refers to the following documents:

- the 13th periodic report of Denmark to the Committee on the Elimination of Racial Discrimination , doc. CERD/C/319/Add.1, and
- Summary Records of the 1120th and 1221st meetings, held on 6 and 7 August 1997, of the Committee on the Elimination of Racial Discrimination, regarding consideration of the 13th periodic report of Denmark, doc. CERD/C/SR.1220 and CERD/C/SR.1221.

Table: Population in Denmark 1 January 1997 by immigrant status and nationality of origin

Nationality of origin	Immigrants	Descendants	Others
Total	**265 794**	**64 498**	**4 940 829**
Europe	**158 123**	**33 922**	**4 940 829**
Denmark[1]	-	-	4 940 829
Finland	3 405	511	-
France	2 881	245	-
Netherlands	3 612	375	-
Iceland	5 332	551	-
Italy	2 617	179	-
Former Yugoslavia [2]	30 177	5 200	-
Norway	12 409	1 520	-
Poland	9 932	1 762	-
Romania	1 473	149	-
Switzerland	1 125	147	-
Former Sovjet Union [3]	3 690	356	-
Spain	1 806	115	-
UK of GB and Northern Ireland	10 326	1 051	-
Sweden	11 890	1 969	-
Turkey	26 533	16 554	-
Germany	22 453	2 342	-
Hungary	1 391	284	-
Austria	1 205	106	-
Other European countries[4]	5 866	506	-
Africa	**21 521**	**5 790**	**-**
Egypt	1 164	367	-
Morocco	4 126	2 519	-
Somalia	8 360	1 525	-
Obter african countries	7 871	1 379	-
Northern America[5]	**6 787**	**969**	**-**
Canada	1 333	341	-
United States	5 454	628	-
Other American countries	**5 121**	**196**	**-**
Asia	**72 004**	**22 997**	**-**
Afghanistan	1 621	220	-
India	2 056	733	-
Iraq	7 557	1 259	-
Iran	10 453	1 421	-
Israel	1 187	116	-
Japan	1 095	82	-
Jordan	770	642	-
China	2 325	413	-
Lebanon	11 341	5 516	-
Pakistan	9 173	6 654	-
Philippines	2 921	445	-
Sri Lanka	6 317	1 984	-
Syrian Arab Republic	1 124	658	-
Thailand	3 433	182	-
Viet Nam	7 772	2 082	-
Other Asian countries	2 859	590	-
Oceania	**1 092**	**122**	**-**
Stateless or nationality not stated	**1 146**	**202**	**-**

1) Incl. Greenland and Faroe Islands.
2) Incl. Bosnia and Herzegovina, Croatia, Slovenia, The former Yugoslav Republic of Macedonia and Yougoslavia.
3) Incl. all former republics of the former Sovjet Union.
4) Incl. Cyprus.
5) Excl. Greenland (Denmark) and Bermuda (Southern and Central America).

20 February 1998

Questionnaire on human rights of migrants.

Sir/Madam,

Referring to the Secretary-General's note G/SO 212/26(1) of 2 December 1997 the Ministry of Foreign Affairs is pleased to forward additional information regarding the above-mentioned questionnaire.

Regarding question no. 1

It is the estimate of the Danish Immigration Service and the Danish national commissioner of police that only very few foreigners on Danish territory do not have a valid visa or residence permit. It is not possible to point to possible countries of origin of these estimated very few persons.

Regarding question no. 2

The Danish Immigration Service is providing information to immigrants and others on general aliens law through leaflets, arranging information lectures and meetings in a special panel of users (of the Immigration Service) with representatives from among others immigrants in Denmark. The Immigration Service also has a staff of translators to be used in every aspect of communication between the Immigration Service and foreigners.

Regarding question no. 3

The Danish Ministry of Labour receives many communications on breaches of articles under the law on prohibition of differential treatment on the labour market. Initiative has been taken to solve the case in court in two cases.

Regarding question no. 4

Denmark has not ratified the ILO conventions no. 97 and 143.

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Report of the Secretary-General

ANNEX

Submission from the World Council of Churches
dated 12 February 1998

GE.98 - 13119

WORLD COUNCIL OF CHURCHES

Response to:

UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

"Questionnaire on human rights of migrants"

In response to this questionnaire, received by the WCC Refugee and Migration Service in January, the WCC submits the following comment and responses:

Terms of Reference:
Regarding terms of reference, we believe that the working definition tentatively adopted by the working group distorts, limits and is counterproductive for the work of the Group. By referring to migration "where the decision to migrate is taken freely...for reasons of personal convenience and without intervention of an external compelling factor," the definition excludes many, if not most international migrants today. It certainly excludes the majority of migrants in especially vulnerable situations. In the experience of the member churches of the WCC around the world, a large part of migration today takes place as a result of compelling circumstances which leave people with no choice, but to leave their homes and homelands.

To limit this definition to "voluntary" migration is to deny the reality of international migration today and so to limit the focus of the working group to render it irrelevant with respect to protection of the human rights of migrants. The exclusion of "refugees, exiles or others forced or compelled to leave their homes" excludes many of those crossing borders who are subject to grave human rights violations in other lands. Masses of people today flee civil war situations, gross violations of human rights, environmental catastrophes and economic collapse. They are neither included in the existing legal definition of refugee nor provided any measure of protection by any other set of such legal standards.

A better definition of the working group's mandate might read:

> For the purpose of the work of this expert working group, the term migrant will refer to all individuals who cross borders to take up temporary or permanent residence in countries other than that of their nationality. Recognizing that certain categories of international migrants benefit from access to status providing varying measures of human rights protection (e.g. refugees, diplomats, persons with permanent residence status, etc.) the focus of this working group will be on individuals and groups with limited or no legal protection for their human rights.

Within the category of migrant, irregular or undocumented migrants should also be recognized. "Irregular migration" is growing into a global crisis today.

In reply to the questions posed:

1. We believe that the most comprehensive and best-documented estimates on the number of migrants in countries around the world are provided by the regular reports of the UN Population Division. Their latest figures indicate that a total of 120 million people resides in countries other than their own, either temporarily or permanently. These estimates include both temporary and permanent migrants, and include substantial data on undocumented or irregular migrants.

2. Churches and other non-governmental organizations work in countries in all regions of the world to strengthen the promotion, protection and implementation of the human rights of migrants. A comprehensive survey has been done in the context of reviewing implementation of implementation of the Programme of Action adopted at the International Conference on Population and Development: Chapter X on International Migration.

The WCC has recently taken two major steps in strengthening church attention to human rights of migrants in concert with its 330 member churches in over 100 countries. One was the unanimous adoption by the WCC Central Committee of a policy Statement on Uprooted People, "Choosing to Risk to be in Solidarity with the Uprooted" in September, 1995. This statement calls for active church engagement to "uphold the life and dignity of uprooted people, refugees, migrants and internally displaced persons." The WCC also declared 1997 to be the Year of Churches Solidarity with Uprooted People. Special activities took place in all regions to further sensitize and increase concern by churches and societies to upholding the dignity and human rights of the uprooted. In many places the explicit focus was on migrants. (A summary of activities and accomplishments of this special year is available from WCC.)

3. Reports to the WCC from its member churches indicate extensive and increasing manifestations of racism, xenophobia and other forms of discrimination against migrants in many countries around the world. The working group should seek to compile such reports and document these phenomena as they impact on human rights.

4. Many initial steps have now been taken by church organizations around the world to raise awareness and launch efforts to promote ratification of the 1990 Convention.

Among these Resources:
WCC together with the Churches Commission on Migrants in Europe (CCME) published in 1993 "Proclaiming Migrants' Rights" a handbook on the 1990 Convention. Tens of thousands of copies have been distributed worldwide in English, French, German and Spanish, in Arabic, Japanese and Portuguese. It remains the only widely distributed promotional material for the Convention.

Formal Support:
Most major international ecumenical organizations have officially declared support for ratification of the convention and call on member churches to engage in activity to promote entry into force. Statements and declarations to this effect have been made by the World Council of Churches, the Conference of European Churches (CEC), the Middle East Council of Churches (MECC), and the Pacific Conference of Churches (PCC). (Roman Catholic

bodies, including the Vatican and most regional Conferences of Bishops, have made similar pronouncements.)

Promotional Activity:
Specialized church-related international bodies have defined plans for organizing ratification efforts and campaigns. These include the Churches Commission for Migrants in Europe (CCME), the Global Ecumenical Network on Uprooted People (GEN), the International Catholic Migration Commission (ICMC), the European Conference on Uprooted People and the South American Ecumenical Network on Refugees and Migration.

In Quito in October, 1997, the South American Network called upon its member bodies to initiate or strengthen national non-governmental organizing campaigns in a number of South American countries, including Argentina, Bolivia, Chile, Ecuador, Peru and Uruguay.

Many of these and other organizations have lamented the lack of information and promotional materials on the Convention available from the UN itself. They note that materials such as have been available for promotion of other conventions, are necessary in awareness building and advocacy with government officials, parliamentarians, news media and others.
Some of these organizations, notably the CCME, have long been active in promoting ratification of the relevant ILO Conventions. (These Conventions are also highlighted in the 1993 WCC-CCME booklet on the UN Convention mentioned above.)

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Report of the Secretary-General

ANNEX

Submission from the Hashemite Kingdom of Jordan
dated 10 February 1998

GE.98 - 13122

Tuesday, 10. February 1998

The Permanent Mission of the Hashemite Kingdom of Jordan presents its compliments to the Office the High Commissioner for Human Rights and would like to refer to its note verbale of 2nd December 1997 on the subject of Human Rights of Migrants.

The Permanent Mission is pleased to enclose herewith the answers provided by the competent authorities in the Hashemite Kingdom of Jordan to the questionnaire enclosed in the above-mentioned note.

The Permanent Mission of the Hashemite Kingdom of Jordan avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Questionnaire on the human rights of migrant workers

C.1 The number of non-Jordanian workers holding valid work permits authorizing them to work in the Kingdom amounted to 123,149 during the period from 1 December 1996 to 30 November 1997.

A.2 Non-Jordanian workers enjoy legal protection in accordance with the provisions of the Labour Act No. 8 of 1996, the regulations, directives and ordinances promulgated pursuant thereto, and the Social Security Act No. 30 of 1978.

D. A number of bilateral labour agreements have been signed between the Government of the Hashemite Kingdom of Jordan and the Governments of a number of Arab and foreign States with a view to cooperation in the field of manpower.

3. There is no form of discrimination between Jordanian and non-Jordanian workers in our legislation or in actual practice. The Jordanian Labour Act No. 8 of 1996 defines the expression "workers" in absolute terms without any discrimination or further specification. The provisions contained in the Labour Act concerning the obligations, rights and privileges of workers are applied to all Jordanian and non-Jordanian workers without any distinction.

Moreover, if an employer refuses to fulfil his obligations towards a worker, the worker, regardless of whether he is Jordanian or non-Jordanian, can institute legal proceedings against the employer.

4. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was submitted for ratification to the competent authority, which decided not to ratify it since its provisions were not consistent with the circumstances and priorities of our society.

With regard to the International Labour Conventions Nos. 97 of 1949 and 143 of 1975, the Government of the Hashemite Kingdom of Jordan is constantly studying and reviewing the International Labour Conventions that have been adopted in order to determine the possibility of ratifying those which are consistent with the situation in the Jordanian labour market.

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Intergovernmental working group of experts
on human rights of migrants
Third session
Geneva, 23 - 27 November 1998

INFORMATION AND COMMENTS RECEIVED FROM GOVERNMENTS, UNITED NATIONS BODIES, SPECIALIZED AGENCIES, INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS

Report of the Secretary-General

ANNEX

Submission from the Government of Sweden
dated 13 February 1998

GE.98 - 13125

The Permanent Mission of Sweden to the United Nations presents its compliments to the Office of the United Nations High Commissioner for Human Rights.

With the reference to the Questionnaire on Human Rights of Migrants dated the 2nd of December, the Permanent Mission of Sweden wishes to submit the enclosed information.

The Permanent Mission of Sweden to the United Nations avails itself of this opportunity to renew to office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 13 February 1998

Questionnaire on the Human Rights of Migrants
for the working group on the implementation of the Commission on Human Rights resolution 1997/15 of April 1997, entitled "Migrants and Human Rights" */

Sweden

1997 (estimate jan-dec)

1. total population: 8 847 089
2. registered immigrants: 44 846
3. registered emigrants: 39,019

Non-nationals living in Sweden 1985-1996 by region of origin
Source: Statistics Sweden, 1997

From:	1985	1990	1995	1996
Nordic countries	193,608	191,772	168,671	165,452
rest of Europe	108,277	117,375	179,011	181,312
Afrika	7,403	17,842	28,729	27,092
North-america	8,39	12,049	14,204	14,584
South-america	15,171	25,765	19,572	18,871
Asia	49,914	102,128	103,866	101,771
Oceania	0,723	1,477	1,865	1,930
Unknown	0,772	4,918	7,517	7,962
Stateless	3,29	8,259	6,743	6,383
Total	388,641	483,704	531,797	526,594

Immigrants and emigrants by citizenship
1992 - okt. 1997 (thousands)
Source: Statistics Sweden, 1997

		1992	1993	1994	1995	1996	1997
Immigrants	Sweden	5814	7038	8864	9808	10577	10250
	other nordic countries	6398	5600	6696	6886	6051	4991
	rest of Europe	7899	29180	48458	14549	9040	9843
	non-European countries	25237	20054	19580	14644	14227	13832
Emigrants	Sweden	12582	15039	16915	18400	19425	20201
	other nordic countries	8964	7940	7048	7286	7318	6282
	rest of Europe	1795	2920	3347	3550	3388	3496
	non-European countries	2385	3975	5351	4575	3753	3596

4. non-nationals authorised to work in the country:
general labour market: 438
within the EEA-agreement: 1 583

*/ Secretariat note: the enclosures to the present submission are kept by the Secretariat and are available upon request.

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INFORMATION AND COMMENTS RECEIVED FROM GOVERNMENTS, UNITED NATIONS BODIES, SPECIALIZED AGENCIES, INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS

Report of the Secretary-General

ANNEX

Submission from the Government of Mexico dated 15 February 1998

GE.98-13128 (E)

Geneva, 16 February 1998

The Permanent Mission of Mexico to the International Agencies at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to the questionnaire contained in note verbale G/SO 212/28 (1) from the Secretary-General of the United Nations, is pleased to send herewith the answers of the Government of Mexico to the questionnaire on the human rights of migrants, which it requests should be transmitted to the office dealing with migration and human rights.

The Permanent Mission of Mexico avails itself of the opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

REPLY FROM THE GOVERNMENT OF MEXICO TO THE QUESTIONNAIRE ON HUMAN RIGHTS OF MIGRANTS CONTAINED IN NOTE VERBALE G/SO 212/28 (1) FROM THE SECRETARY-GENERAL OF THE UNITED NATIONS

1. What are the latest figures or estimates for:

- Total population, including non-nationals, preferably by nationality of origin?

According to 1996 data, the total population of Mexico is 92,711,000. 1/

With regard to non-nationals, as of December 1996 261,446 aliens were registered as residing permanently in Mexico, the largest group among them being United States nationals (64,571) and 169,174 aliens as living temporarily in the country, United States citizens again representing the most numerous group (50,936). 2/

- Number of nationals abroad, preferably by country of residence?

The largest community of persons of Mexican origin living abroad is in the United States. In 1996, between 7.0 and 7.3 million Mexicans were living in that country, including between 4.7 and 4.9 million permanent residents and between 2.3 and 2.4 million without papers. The total number of residents is approximately equivalent to 8 per cent of the total population of Mexico and 3 per cent of the population of its neighbour country. 3/

- Non-nationals having authorization to work in the country?

Under the General Population Act, aliens permanently residing in Mexico have the right to work. The total number of non-nationals who could in principle exercise that right is, according to December 1996 data, 261,446. However, out of this number the exact percentage exercising their right to work is not known with certainty. 4/

- Estimate of irregular migrants, including visa abusers, by country of origin?

According to unofficial sources, up to December 1996 the main countries of origin of irregular migrants were Guatemala (52,000) and the United States (232,000).

2. What measures are being taken to strengthen the promotion, protection and implementation of the human rights of migrants, such as:

- legal measures;

- public information and education;

- provision of direct assistance and services;

- other measures including bilateral and multilateral arrangements?

The Government of Mexico gives high priority to protecting the human rights of migrants and has accordingly put into operation various mechanisms both at national level and in the bilateral and multilateral spheres aimed at guaranteeing respect for the human rights of Mexicans who, whatever their migratory status, are living abroad and of immigrants and transmigrants entering the country.

In this respect the Political Constitution of the United Mexican States, the supreme law governing the life of the country, is very specific, laying down in its article 1 that "every individual shall enjoy the guarantees which this Constitution affords and which may not be restricted or suspended except in such cases and on such conditions as the Constitution itself determines".

Likewise, the Congress of the Union, in pursuance of the provisions of article 73 of the Constitution, is pledged to enact legislation on nationality, the legal status of aliens, citizenship, naturalization, settlement, immigration and emigration.

In Mexico the Ministry of the Interior is the body responsible for applying the migration policy and, in accordance with the legal arrangements and specifically with the General Population Act, must, in exercising those powers, "ensure respect for human rights, and, especially, for the integrity of the families of those subject to this law" (art. 7).

The National Development Plan for 1995-2000 lays down as one of the main concerns of the migration policy the exercise of the powers of migration surveillance within the national territory, in a spirit of respect for the law and for the human rights of migrants.

Accordingly, during the past three years the Government of Mexico has been working intensively for the enhancement of its migration policy through concrete activities reflecting its humanitarian nature. As an essential step to this end, in 1996 the Federal Executive reviewed the legal provisions on migration and submitted to the Legislature proposals for reforms and additions to the General Population Act, which were approved by the Congress of the Union and came into force in November of that same year.

These reforms add up to more effective protection of the human rights of aliens who are in the national territory, more effective legal guarantees in migration formalities and procedures, promotion of integration of families, and more energetic measures to combat offences relating to trafficking in human beings.

Particularly noteworthy among the amendments and additions made to the General Population Act which are relevant to human rights is the revision of article 68 to allow timely registration of the birth of children to aliens in the national territory without requiring prior verification that the parents are legally resident. Thus full exercise of their constitutional rights and immediate access to essential public services such as education and health care are ensured.

Likewise, the definition of the offence of trafficking in migrants is tightened and penalties are prescribed amounting to between 6 and 12 years'

imprisonment and a fine of between 100 and 10,000 days' minimum wage, in order to deny traffickers in human beings the benefit of release on bail with security. Thus, too, under article 138 severer penalties are prescribed for trafficking in individuals without papers when it involves minors and the migrants' health, lives and physical integrity are endangered.

Note that the human rights of migrant workers are duly protected and regulated under the Federal Labour Act, specifically by the regulatory provisions referred to in article 123 of the country's Political Constitution. That article states that every person has the right to decent and socially useful employment, to which end measures shall be taken to promote job creation and social organization for employment, according to the law, the Congress of the Union being empowered to enact labour legislation without contravening the principles established by this provision.

Through the National Programme for Protection of Migrants conducted since 1995 by the Ministry of the Interior through the National Institute of Migration (NIM), the Government of Mexico is carrying out continuing activities directed towards protection of the human rights of migrants, of their physical integrity and of their property rights, irrespective of their nationality and of whether they are with or without papers.

The Programme recognizes that, owing to their insecure legal, social, economic and psychological situation, migrants are frequently the victims of common criminals, of organized crime, notably gangs of traffickers in persons, and of unscrupulous authorities, who commit to their detriment offences such as assault, robbery, rape, extortion and other violations of their fundamental rights established for nationals and aliens in the Political Constitution of Mexico and its implementing laws.

The activities provided for under the Programme cover the following six areas:

I. Establishment of the Migrant Protection Groups;

II. Public information on the basic rights and obligations of migrants in our country;

III. Programme of Migration Monitoring, to ensure that inspections take place and are conducted according to the established rules;

IV. Programme for training of public servants with operational and directing functions in the NIM, with the participation of the National Human Rights Commission (NHRC) and the Office of the United Nations High Commissioner for Refugees (UNHCR);

V. Improvement of conditions in migrant reception centres;

VI. Strengthening and consolidation of mechanisms for consultation on consular protection with the United States and the countries of Central America.

This Programme reflects the binding ethical and moral commitment of the Government of Mexico to safeguarding human rights in the country and honouring the international commitments entered into in this sphere.

I. Migrant Protection Groups

These groups represent the outcome of coordination between the three levels of government, Federal, State and Municipal, and their main task is to protect migrants from acts committed against them by common criminals, organized crime and unscrupulous authorities.

Currently nine such groups are operating under the direction of the National Institute of Migration: six on the northern border and three on the southern border. Recently their members were given training on legal aspects, migratory culture, human rights, physical fitness, self-defence, handling of weapons and strategies in field operations; this training will without any doubt result in better protection of migrants.

II. Public information on the basic rights and obligations of migrants in our country

With the object of informing migrants, whatever their legal status, of their rights and obligations during their stay in Mexico and of the existence of institutions to which they can apply for help and submit protests and complaints in case of abuses, a Guidebook on Human Rights for Migrants has been prepared in coordination with the National Human Rights Commission. To date over 250,000 copies have been distributed, mainly through the migrant protection groups, non-governmental human rights bodies, Mexican consulates abroad, and the consulates of Central American countries in Mexico.

III. Monitoring of respect for the human rights of migrants

The Programme has set up a monitoring group to ensure that measures pertaining to inspection, detention and expulsion of aliens carried out by the NIM authorities are in conformity with the law.

IV. Cultivation of an ethos of respect for human rights among personnel dealing with migrants

Training activities are conducted on a continuing basis to promote a culture of respect for the human rights of migrants and an ethic of service among the staff of the NIM. To this end, training courses in human rights have been conducted at various branch offices of the NIM, with the support of the National Human Rights Commission and the Office of the United Nations High Commissioner for Refugees. Under this head 15 workshops have been held for the benefit of 450 migration inspectors and officers.

A start has also been made on the Inter-Agency Training and Promotion Programme for Migration Personnel, 1997-1998, in coordination with the NHRC, the NIM, UNHCR and the Mexican Commission for Aid to Refugees. Three workshop courses, held in three different federal territories, were attended

by 60 members of the administrative staff and migration officers. This programme is planned to last for two years and is intended to provide training for 2,400 staff members of the NIM.

Again in the area of education, the National Human Rights Commission has conducted a training programme designed for promoters providing continuing care in various institutions. In addition, six workshops and two conferences have been held for the training of promoters looking after the migrant population on the northern frontier. These meetings were attended by 234 persons, including students and teachers from the Tijuana Latin American University and from the Tamaulipas Autonomous University, together with members of the Young Christians' Association and the United States non-governmental organization Store Front, based at San Diego, California.

With the aim of promoting measures to combat impunity in cases of violation of the rights of children migrating with their families, the NHRC held two training workshops, one in coordination with the National System for Integrated Family Development, municipality of Gómez Palacio, Durango, and the other with the Tijuana Community Frontier Association, C.A.; they were attended by 31 participants.

V. Improvement of conditions at migrant reception centres

Migrant reception centres have been remodelled and extended throughout the national territory, in order to provide decent accommodation for aliens without papers who are detained pending determination of their legal status.

In this connection it may be noted that the National Human Rights Commission has issued a publication entitled "Marco Jurídico y Funcionamiento de la Estaciones Migratorias en Mexico" ("Legal purview and functioning of migrant reception centres in Mexico"), in order to publicize the relevant legal provisions and identify the locations assigned for the protection of aliens.

VI. Strengthening and consolidation of mechanisms for consultation on consular protection with the United States and the countries of Central America

The Government of Mexico has promoted the establishment of these bilateral arrangements with an eye to ensuring continuous and free-flowing communication between migration authorities and consular representatives, to facilitate the discharge of responsibilities for consular protection and expedite the consideration and adjudication of cases of human rights violation.

Thus, in the light of experience with the Mechanisms for Consultation on the Functioning of the Immigration and Naturalization Service (INS) and Consular Protection, involving the Mexican consular representatives in the United States and the United States migration authorities, the year 1996 saw the establishment of the mechanisms for consultation on consular protection between Mexico and Guatemala, Mexico and Costa Rica, Mexico and El Salvador,

and Mexico and Honduras, in which the Mexican migration authorities meet with the consuls of those Central American countries. Finally, in 1997, Mexico and Nicaragua set up a similar mechanism.

Actions at the bilateral level

In addition to the Mechanisms for Consultation on Consular Protection which have been established with other Governments, Mexico has entered into various bilateral commitments aimed at ensuring respect for the human rights of its nationals abroad and of any migrants from other countries who are present in its national territory.

In particular, this subject is a priority item on the agenda concerning migration in relations between Mexico and the United States. Consequently, in practically all the bilateral forums, including presidential meetings, at which matters relating to the phenomenon of migration are raised, the human rights of migrants are accorded special attention.

Thus, in recent years, through dialogue and communication between the Governments of the two countries, better conditions have been brought about for the performance of the functions of consular protection carried out by Mexico's representatives in the United States on behalf of Mexican nationals in the latter country.

Since 1991, consulates in the frontier region have had available the Federal Mechanisms for Border Liaison, enabling them to deal with and settle on the spot issues intrinsic to coexistence in frontier areas. The subjects dealt with include consular protection, police cooperation, protection of the environment, and border road junctions and bridges.

Within the Joint Mexico-United States Commission there has been set up a Working Group on Migration and Consular Affairs to deal with major questions relating to protection. Arising from the analysis of the phenomenon of migration, an event without precedent in relations between the two countries took place on 6 May 1996 with the signing of the Memorandum of Understanding on Consular Protection of Nationals of Mexico and the United States. Through this instrument the two Governments undertook, among other commitments, to provide any individual detained by the migration authorities with information on his legal rights and options, including the right to establish contact with his consular representatives and fellow nationals.

Likewise, through this bilateral instrument, both Governments agreed to ensure, in accordance with the relevant laws of each country, that consular representatives were notified of specific cases involving detention of minors, pregnant women and persons in risk situations.

Through the Mechanisms for Consultation on the Activities of the Immigration and Naturalization Service (INS) and Consular Protection, which have also been set up, the dialogue that exists between the consular representatives and the migration authorities in the United States is regularized and institutionalized. In addition to facilitating exchange of information, these mechanisms enable consuls to attend with greater efficiency to all the cases involving protection of Mexicans which require corrective

action on the part of the migration authorities. To date, 128 meetings have been held, plus two regional evaluation meetings (El Paso, Texas, 21 October 1997 and Dana Point, California, 11 December 1997).

Further, in May 1997 the Presidents of Mexico and the United States signed the Joint Declaration on Migration and Border Cooperation, involving major bilateral commitments regarding protection of human rights, in particular:

(a) To explore ways and means of strengthening the mechanisms and forums for consultation and cooperation that the two Governments have established, at the national and local levels, in regard to migration and consular protection;

(b) To protect the rights of migrants and take energetic measures to ensure that justice is done in cases where complaints of illegal action are lodged by migrants and border communities, and also to respect both constitutional guarantees and due legal process in the application of the immigration laws;

(c) To ensure that safe and orderly procedures are followed for the repatriation of migrants.

In pursuance of this last bilateral undertaking, the authorities of both Governments have agreed to the implementation of local regulations along the entire border to ensure that repatriations of Mexican nationals are carried out in a safe and orderly manner.

To this end, the two Governments are currently working on the determination of such regulations, some of which are already being applied, on the basis of bilaterally agreed general criteria and parameters. Thus, repatriations must take place in the presence of the Mexican migration authority, according to timetables and at places previously determined between the two parties; notice must be given, to include information on the nationals to be repatriated, before the repatriations are carried out; the United States authorities must have due care for the unity of families and accord special attention to expectant mothers or women with children, to disabled persons and to minors.

On the occasion of the meeting of the Working Group on Migration and Consular Affairs, held on 5 May 1997, it was agreed to set up a Working Subgroup on Safe and Orderly Repatriations with a view to laying down general guidelines according to which at every frontier post the migration authorities of both countries would draw up specific agreements on timetables and points of entry for repatriations of co-nationals detained by the Immigration and Naturalization Service (INS) in the United States of America. At the meetings on the Consultation Mechanisms held between NIS and Consular Protection officials specific agreements have been drawn up for most of the frontier points.

Both Governments have agreed to cooperate in planning and implementing measures to enlighten public opinion as to the human rights of migrants in order to combat discriminatory attitudes or negative perceptions concerning

the phenomenon of migration. To this end, through various agencies at the internal and bilateral levels, action, in which the local authorities responsible for providing care to migrants are encouraged to participate, is being taken to promote awareness regarding the cultures of the two countries and understanding of the need for human rights protection.

Worthy of note, finally, is the completion on 30 August 1997 of the Joint Mexico-United States Study on Migration, in which 10 distinguished academics from each country took part. The study made possible the development of an analytical framework and common methodology for the analysis and interpretation of the phenomenon of migration. During the two and a half years that it took, various aspects of the migration question were addressed in order to produce a concerted qualitative and quantitative interpretation as the basis for a bilateral approach to the phenomenon.

The preparation of the study was endorsed by the Presidents of Mexico and the United States which the signing on 7 May 1997 of the Joint Declaration on Migration, in which they committed themselves to protecting the dignity of their nationals through an integrated approach to the management of the migration phenomenon.

The human rights of migrants are also a matter of the highest importance in bilateral relations between Mexico and the countries of Central America. With each of those countries there exist bilateral working groups on various questions relating to the migration phenomenon whose activities have stimulated a constructive dialogue to address the human rights situation of their nationals who are in Mexico as migrants, whether with or without papers.

In fact, the dialogue conducted within such working groups has resulted in the creation and putting into operation of the Mechanisms for Consultation on Consular Protection which, combined with the measures implemented at the internal level by the Government of Mexico in the sphere of protection of the human rights of migrants, have helped to promote better bilateral understanding in this area.

In particular, the Government of Mexico has carried out a series of measures aimed at improving the treatment accorded to migrant workers, mainly agricultural, entering across the southern border. To this end, the NIM has defined the criteria, requirements, procedures and conditions of migration for the admission, stay and departure of temporary agricultural workers and those accompanying them, putting into effect for this purpose the Programme for Regularization of the Conditions of Stay of Agricultural Workers, with specific reference to Guatemalan nationals who enter Mexico to work in the southern zone.

There is also the Ad Hoc Group on Guatemalan Temporary Migrant Agricultural Workers, which studies concrete proposals for strengthening cooperation between the two countries in the protection of such workers. The main objective at the fourth meeting of the Group, held in June 1996, was to make progress in the study of specific proposals for reinforcing their cooperation in regard to the protection of Guatemalan agricultural workers.

On that occasion, Mexico undertook to carry out socio-demographic surveys in the State of Chiapas and to put into official use the Migration Form for Agricultural Visitors, subject to available resources, while Guatemala will provide its migrant agricultural workers with an identity document prior to their admission to Mexican territory and will institute regulation, control and training for recruiting agents to obviate their subverting the legal admission process.

At the same time, the embassies of Mexico in Belize, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua and Peru and the offices of the diplomatic representatives of those countries accredited in Mexico are cooperating closely in addressing alleged human rights violations, including discrimination against their nationals in Mexican territory or against our nationals in those countries.

Action at the multilateral level

At the multilateral level, the Government of Mexico has been active in promoting the adoption of an integrated, objective and long-term approach to address in a balanced way the causes and manifestations of the migration phenomenon. As an essential part of these efforts, Mexico has pressed for the protection of the human rights of migrants to receive special attention in various international and regional forums.

Within the United Nations, the Government of Mexico has submitted both in the General Assembly and in the Commission on Human Rights resolutions whose main thrust is to promote and protect the human rights of migrants.

At the same time, it has supported the adoption of resolutions aimed at eliminating any contemporary form of racism, racial discrimination, xenophobia or other similar forms of intolerance, currently manifested in the proneness to institute new policies purportedly justified by racial, cultural or national superiority or particularism and installed in various sectors of society or as governmental policies, whether pursued by institutions or by individuals or groups of various social origins. This phenomenon is particularly disturbing as in the majority of cases it is directed against the most vulnerable groups such as migrant workers, asylum seekers and refugees.

In the Regional Conference on Migration, which brings together at vice-ministerial level the Governments of Canada, the Central American countries, the United States and Mexico, the Mexican Government has urged that the item on the human rights of migrants should be placed high on the regional agenda. Consequently, through the Joint Communiqué adopted at the First Regional Conference on Migration, held in March 1996 in Puebla, Mexico, the 10 participating Governments agreed, inter alia:

> To condemn violations of the human rights of migrants and others, irrespective of their migratory status, and to fight for the elimination of such violations;

To raise public awareness concerning the human rights of migrants as a means of promoting respect for their dignity and of combating anti-immigrant attitudes and rooting out illegal acts committed against immigrants;

To encourage the States of the region, particularly those with common borders, to develop mechanisms for consultation on questions of migration and protection of the human rights of migrants, with the participation of the authorities at the various levels of government, officials responsible for applying the law, and consular and diplomatic representatives from the countries.

In pursuance of those commitments the 10 participating Governments, in the Plan of Action adopted during the Second Regional Conference on Migration, held at the end of March 1997 in Panama, reaffirmed as one of their objectives "full respect for the existing provisions on the human rights of migrants, irrespective of their migratory status, as defined in the 1948 Universal Declaration of Human Rights and other relevant international instruments".

With that objective in view, the Governments agreed, as part of the Plan of Action, to adopt measures for regional cooperation in order to prevent and combat violations of the human rights of migrants; to disseminate information on those rights in order to raise public awareness as a means of promoting respect for the dignity of immigrants, combating anti-immigrant attitudes, and eradicating illegal acts committed against migrants; to ensure appropriate treatment of and assistance to migrants, irrespective of their migratory status, particular attention being accorded to the special needs of women and children, the elderly and the disabled, including their protection; and to promote the holding of regional meetings between migration authorities, ministries of foreign affairs, and State offices and other bodies for protection of human rights, jointly with non-governmental organizations concerned for the protection of the human rights of migrants.

In particular, as one of the activities provided for in this Plan of Action, the 10 Governments that participated in the regional conference decided to organize a seminar on the human rights of migrants, to be held in the United States in April 1998.

3. Have there been manifestations (How many cases?) of racism, xenophobia and other forms of discrimination against migrants in your country and against your nationals in another country?

The migration policy of the Government of Mexico is formulated and implemented in the light of the recognition that the country is a place of origin, destination and transit for large-scale migratory movements. Mexico's migration policy takes due account of the complexity of those movements and the structural reasons for their occurrence. Likewise, one of its mainstays is the commitment of the Mexican authorities to full respect for the human rights of migrants in tackling the problems involved.

In this context it is worth mentioning that the NHRC has put into operation a Programme on the Human Rights of Migrant Workers, with the object of promoting protection and defence of the fundamental rights of persons emigrating from and entering Mexican territory, mainly over the southern border.

The purpose of this programme is to eradicate practices which violate the human rights of this vulnerable group, to which end it carries out research, promotion and protection activities in regard to the human rights of migrants and training work with the migration authorities. The objective is to have available updated information and statistics which will enable it to detect the most important violations of human rights.

The NHRC has drawn up various studies on Mexican migratory workers who go to the northern frontier of Mexico and enter the United States of America, as also on those migrants from other countries who use Mexican territory as a country of transit to reach Mexico's northern border strip and settle in United States territory.

With regard to the northern frontier, the said NHRC has published the "Segundo Informe sobre las Violaciones a los Derechos Humanos de los Trabajadores Migratorios Mexicanos en su Tránsito hacia la Frontera Norte, al Cruzarle y al Internarse en la Franja Fronteriza Sur Norteamericana" ("Second report on violations of the human rights of Mexican migratory workers in their transit towards the northern frontier, in crossing it and in entering the United States southern border strip"). This report finds that abuses and vexatious acts may be committed both by Mexicans, whether authorities or individuals, during the departure preparations and transit to reach the crossing point, and by United States authorities and individuals at the time when the migrants attempt the crossing or are already in United States territory.

In this report the NHRC identifies the following types of abuse and/or violation: homicide; lesions; abuse of authority (physical ill-treatment, intimidation and threats); sexual abuse and/or rape; robbery; unlawful deprivation of liberty; and confiscation and/or invalidation of documents.

As regards the southern border, the NHRC produced an "Informe sobre Violaciones a los Derechos Humanos de los Inmigrantes. Frontera Sur" ("Report on violations of the human rights of immigrants: southern border"), in which the following types of abuse and/or violation were identified: violence on the part of Mexican authorities (ill-treatment, beatings and threats); robbery, extortion, confiscation and/or invalidation of documents and other abuses committed by migration authorities, police units and other State agencies; unauthorized deportations and expulsions; failure to provide decent conditions during detention; non-compliance with the obligation to provide information on the rights of an immigrant under detention; and corruption, negligence or collusion on the part of authorities responsible for ensuring respect for the migratory, labour and social rights of migrant workers.

The frequency with which these types of violation occur, whether on the northern or the southern border, is difficult to determine, inasmuch as the

number of protests or complaints submitted does not always reflect the number of violations committed against the persons concerned owing to fear or to their situation as transients with no fixed abode.

Nevertheless, it may be stated that the complaints received of human rights violations on the northern border are very few because most of them are committed by United States authorities, over which the National Commission has no jurisdiction.

Regarding human rights violations committed on the southern border, between June and October 1996 the NHRC received 59 complaints in which the complainants were nationals of countries of Central and South America; however, only seven out of this total were cases where the complainants alleged violations committed by Mexican authorities against Central American citizens entering the national territory without papers. During the same period the State Human Rights Commissions operating in the southern border area received only three complaints.

Concerning these complaints of human rights violations, no specific information is available which would make it possible to affirm that they resulted from manifestations of racism or xenophobia or other forms of discrimination against the complainants.

Note, finally, that Mexico has practised throughout the years a refuge and asylum policy which has won international recognition. Noteworthy in this regard is the implementation, as from August 1996, of the Migratory Stabilization Plan, which grants Guatemalan refugees who entered the country during the 1980s the possibility of acquiring the status of inmigrantes, if they have decided to settle in Mexico, so that subsequently they can opt for the status of inmigrados, with the consequent right to apply for a Mexican Naturalization Card. Under the same programme, those Guatemalans who intend to return to their own country have the possibility of regularizing their situation by acquiring the status of non-immigrants.

Through this type of action the Government of Mexico ensures that all refugees can carry on their activities in the national territory with full legal guarantees.

4. What steps have been taken in order to ratify the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Labour Organization (ILO) Convention concerning Migration for Employment (Revised), 1949 (No. 97), and the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (No. 143)?

The Government of Mexico is currently studying the possibility of ratifying the main international instruments dealing with protection of the human rights of migrants.

In particular, with regard to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, a working group composed of representatives of various branches of the Federal

Executive has been set up to study the Convention and the national legislation on the subject with a view to its earliest possible ratification.

Note, however, that Mexico, while not a formal party to the Convention, gives due attention, under its domestic legislation, to protecting the rights of migrant workers and their families who are on its national soil.

Notes

1/ Anuario Estadístico 1997, National Institute of Statistics, Geography and Data Processing.

2/ Estadística Migratoria, National Institute of Migration, vol. III, No. 11, November 1997.

3/ Estudio Binacional Mexico-Estados Unidos sobre Migración, October 1997.

4/ Estadística Migratoria, Instituto Nacional de Migración, vol. III, No. 11, November 1997.

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COMMISSION ON HUMAN RIGHTS
Intergovernmental working group
of experts on human rights of migrants
Third session
Geneva, 23-27 November 1998

INFORMATION AND COMMENTS RECEIVED FROM GOVERNMENTS, UNITED NATIONS BODIES, SPECIALIZED AGENCIES, INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS

Report of the Secretary-General

ANNEX

Submission from the Government of the Eastern Republic of Uruguay
dated 21 January 1998

GE.98-13137 (E)

QUESTIONNAIRE ON THE HUMAN RIGHTS OF MIGRANTS

1.1 The most recent figures of the number of persons resident in the country, born abroad by five-year periods by date of arrival in the country, by sex and age group and level of education were obtained in 1985. These figures indicate a total of 103.002 foreigners, as shown below:

Note: The graphs have been placed in the secretariat archives and may be consulted on request.

1.2 No overall records of Uruguayan nationals residing abroad are available. Emigration was particularly intense between 1970 and 1980 owing to the political situation, which prompted a large number of citizens to leave. Since 1985, as a result of the restoration of democratic conditions, very large numbers of nationals who were residing abroad as refugees have been returning. The return of Uruguayans was supported both technically and financially by UNHCR and IOM.

Total number of repatriations by geographical area (1985)

	Percentage	Total
Adjacent countries (Argentina, Brazil, Chile)	26.5	2 866
Rest of South America	8.5	915
Central America and Mexico	13	1 405
USA and Canada	2.7	297
Europe	41.4	4 476
Israel	0.6	68
Australia	1.9	210

Source: National Repatriation Commission, Report on Assisted Persons, January 1989.

1.3 Existing regulations contain nothing specific concerning this problem. In practice, any foreigner who obtains a Uruguayan identity card setting out his personal particulars, name, date and place of birth, together with certificates authenticated by the Consular authorities of his country of origin is entitled to work in Uruguay as a temporary resident for a period of one year. Subsequently, he must request permanent residence and explain how and why he wishes to remain in the country. A foreign worker enjoys all the rights to which the Uruguayan worker is entitled under the country's labour and social security legislation. Employers are liable to the penalties laid down by law if they fail to grant foreign workers equal treatment in employment.

1.4 No estimates are available on this subject. However, the freedom of entry into the country guaranteed by the Constitution and the country's policy of doing away with visa requirements in respect of European and American countries constitute the two basic factors that explain why there is virtually no illegal migration to Uruguay.

2. Uruguay's migration legislation dates back to the beginning of the century. Recently, however, a multidisciplinary commission was established to bring this legislation into line with present circumstances. A Bill on the

subject was submitted to Parliament for discussion in November 1997. It envisages the creation of information and advisory services for migrants. The text is appended for information.

3. No. Uruguay has traditionally been a country open to migrants and so far no manifestations of racism or xenophobia have been recorded.

4. Uruguay is considering the possibility of acceding to the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families. It has already, by Law No. 12030 of 27 November 1953, ratified ILO Convention 97.

Ministry of the Interior
Ministry of Foreign Affairs
Ministry of the Economy and Finance
Ministry of Education and Culture
Ministry of Transport and Public Works
Ministry of Industry, Energy and Mining
Ministry of Labour and Social Security
Ministry of Public Health
Ministry of Livestock, Agriculture and Fisheries
Ministry of Tourism
Ministry of Housing, Regional Planning and the Environment

Montevideo,

President of the General Assembly
Mr. Hugo Batalla

Sir,

The Executive has the honour to submit for consideration the enclosed Bill regulating the entry of persons into and their departure from the country, as well as the sojourn of foreigners within the country.

I. General

1. Brief recapitulation of Uruguay's migration legislation

It is common knowledge that international migration affects human society in many ways, not only from the demographic, but also the economic, labour, medico-legal, sociological and political points of view. It has, on the other hand, been a major factor promoting the progress of humanity and is closely associated with its history.

There is no denying the fact that the gradual and steady development of many of the countries of America can be attributed to immigration, and that for long periods - mainly during the nineteenth century and the beginning of the twentieth century - they were completely open to foreigners. Subsequently, this open-door period gave way to one characterized by the imposition of increasing restrictions on foreign immigration based on various reasons in the general interest. It may be said that today there is no country which has not, in one way or another, severely restricted foreign immigration.

Uruguay followed this trend. Immigrants could enter the country quite freely until 1932, when for the first time a Law (Law No. 8868 of 19 July 1932) introduced permanent and general prohibitions on the admission of foreigners for reasons of public policy. This Law supplemented the previous Law No. 2096 of 18 June 1890, now obsolete, which, patterned on the Argentine law of that time, reflected a policy of promoting "directed migration", or what demographers now call "organized migration", without making provision for general grounds for not admitting foreigners to the country.

In the democratic and liberal States, migration, covering both emigration and immigration, simply implies the application of the principle of freedom inherent in the human person, recognizing that such freedom of movement should be restricted only in the general interest, as in the case of all human rights.

The constitutions of these countries proclaim this right to emigrate and immigrate in a liberal manner and leave its regulation up to the law. Thus the principle of the freedom of persons to enter and depart from a country constitutes the general rule, and exceptions or restrictions reflecting constitutional or legislative provisions are invariably based on the general interest.

In Uruguay, this concept was expressly embodied in article 36 of the 1934 Constitution and recurs in subsequent constitutional texts, as in article 37 of the present Constitution which proclaims, together with the principle of free entry, the requirement that immigration should be regulated by law but that "in no case shall an immigrant be admitted who has physical, mental, or moral defects which may injure society". The period during which the 1934 Constitution was in force saw the adoption of Law No. 9604 of 13 October 1936 which is still in force except for a number of partial derogations required by the 1952 Constitution in respect of questions of administrative litigation. This Law increased the number of prohibitions on the admission of foreigners laid down in the previous Law of 1932, as well as grounds for expulsion.

Since this period, therefore, Uruguay has possessed a body of immigration regulations designed to strengthen the protection of public order and security within the country consisting of prohibitions on entry and grounds for expulsion, i.e. criminality and politico-social, health and economic reasons. However, the constitutionality of some of the provisions of this Law has been questioned, it suffers from a large number of shortcomings and fails to offer an adequate, fair and effective solution to various new and serious problems that arise in connection with the entry and sojourn of foreigners in the country.

On the other hand, the 1936 Law which merely established immigration regulations also failed to regulate organized or planned immigration in the light of the country's demographic and economic requirements, which are of basic importance from the standpoint of migration policy.

2. The Executive's 1988 Bill

On 11 December 1988 the Executive submitted to Parliament a Bill regulating the entry and departure of persons into and from the country, as well as the sojourn of foreigners.

This important piece of draft legislation, based on the most recent solutions adopted in matters of migration and drawn up with the technical assistance to experts from the International Organization for Migration, failed to obtain parliamentary approval at that time.

It was claimed that the Bill would replace the body of legislation referred to above with a single law, maintaining the principle of spontaneous immigration, which had been the pride of the Republic, without overlooking the need to recognize and promote organized immigration to the extent necessary and subject to the country's economic and financial possibilities, and in both cases laying down adequate standards guaranteeing an effective migration policy.

However, in the light of subsequent developments in the country, it was obvious that the Bill suffered from a number of shortcomings that a general migration law would be unable to make good at the present time, mainly in respect of grounds for refusing foreigners admission, criminal offences and penalties, as well as administrative remedies and judicial procedures that ensured the required balance between the need for social protection implied by the very concept of migration and the existence of minimum procedural guarantees to which the persons concerned should be entitled.

3. Sources of the Bill

It is clear that the Bill which is now being submitted to Parliament for consideration reflects the same reasoning and contains the same principles as that of 1998. For example, the fact that some of its provisions have been reproduced word for word and only drafting changes made in others reveals that the same approach is being used. For this reason, various parts of this description of its background duplicate the one drawn up at the time to justify the Executive's initiative.

The relevant legislation of the Latin American countries, and especially that of Argentina, Chile, Costa Rica and Paraguay, which is regarded as being the most up to date, was consulted and used as a source of ideas. The two latter countries possess the most advanced migration legislation (Costa Rica's General Law No. 7033 of 1986 on Migration and the Status of Foreigners and Paraguay's Law No. 978 of 1994 on Migration), and it was therefore used as background material and a source of inspiration for various provisions of the Bill and to make good some of the shortcomings of that of 1988 which could no longer be overlooked; the new Bill accordingly includes provisions on specific criminal offences and penalties in migration matters and judicial remedies and procedures ensuring protection of the rights of foreigners recognized by our legal system and, naturally, by the provisions of the Bill themselves.

Lastly, it includes a number of innovative provisions reflecting the need to harmonize the solutions adopted in respect of the entry and sojourn of foreigners with other regulations on political asylum and the extradition of offenders. In this way, and based on the proposals made in the Bill on asylum submitted by the Executive some time ago to Parliament and now under consideration, express reference has been made in the text to the grounds for a refusal to admit foreigners as a means of preventing the entry into or sojourn in the country of terrorists as an additional means of combating this scourge which has ravaged the world.

4. Desirability of a general law on migration

It is precisely this last point that is one of the factors - although not the only one - that prompted the Executive to submit a general law on migration to the Legislature for consideration.

A great deal of thought has been given to international terrorism in the context of migration movements as a problem that could not be disregarded in view of the events that the country has experienced in recent times and their repercussions at the international relations level.

The Executive had already taken this situation into account in the Bill on asylum by adopting the approach used in various agreements, including some that have been acceded to by Uruguay; one of these agreements is the Extradition Treaty between Uruguay and Spain of 28 February 1996, which has already been ratified and is in force. Its provisions make it impossible for a terrorist to claim asylum by not classifying the acts for which he is responsible as political crimes. This provision was used in the text on asylum and it was both natural and inevitable that it should be included in the Bill on migration. In point of fact a terrorist may try to enter or stay in the country in various ways - either by requesting asylum or political asylum and invoking the concept which defines political offences only in terms of a person's motives, by requesting during the extradition process that account should be taken of the political nature of the offence for which he is held responsible based on the same subjective criterion, or yet by entering the country in an illegal or clandestine manner and requesting the application of migration regulations governing the sojourn of foreigners, or even arranging his entry under such regulations. If these regulations fail to specify grounds for refusal of admission or for the expulsion of foreign terrorists or persons who are members of organized groups which engage in terrorist activities to achieve their purposes, such undesirable individuals will always find ways of remaining in the country. For this reason, the Bill contains the same kind of provisions included in the Bill on asylum by specifying as grounds for refusal of admission and for the expulsion of foreigners their status as persons responsible for terrorist acts or members of groups that engage in such acts in order to achieve their ends.

It is to be noted in this connection that the Bill goes beyond protection against terrorism as a means of social defence. The Executive realizes that a democratic country's migration law must also include - as is done in the Bill - grounds for refusal of admission and the expulsion of foreigners based on participation in organizations which, by acts of violence, undermine democratic institutions, the state of law and the representative system of government, including acts apart from those which are regarded as terrorist acts in the narrow sense.

The Executive's initiative is, of course, motivated by other important considerations. Uruguay's domestic legislation on migration is obsolete and incomplete and some of its provisions are inapplicable at the present time, and in addition it is becoming increasingly difficult to cope with the new and difficult situations that arise in this area, such as those connected with international terrorism. It was therefore considered that the constitutional directive to the effect that "immigration should be regulated by law" must be

reformulated and made to reflect the country's present needs. An end must be put to the present situation in which, apart from the obsolete laws referred to, and in many cases in spite of them, regulations, resolutions, instructions and simple in-house orders issued by the administration supplement the various regulations on the subject whose formulation, in accordance with constitutional directives, have the force of law.

5. The main objectives of the Bill

The Bill, like that of 1988, is designed to replace the laws in force by a single text. The principle of spontaneous immigration is retained and its various aspects regulated, but at the same time organized immigration is recognized and regulated to the extent required, subject to the country's economic and financial possibilities. In both cases suitable provisions ensure effective control over migration.

The solutions proposed imply strict respect for the constitutional provision that regulates the entry and sojourn of foreigners in the country and that proclaims the fact that immigration is regulated by law and the principle of free entry, providing that the immigrant is not suffering from "physical, mental or moral defects which may injure society".

The Bill takes into account the constitutional principle and directive whose twofold objective is to regulate, on the one hand, spontaneous immigration by provisions concerning entry, sojourn and departure, by defining specific categories of migrants, by describing grounds for refusal of admission and for expulsion based on reasons in the general interest (public order, internal security, public health and economic), by specifying - to the extent required by the social protection of the country - criminal and administrative offences and penalties, and by protecting the rights of the persons concerned by means of guarantees of administrative proceedings, administrative litigation and in some cases legal proceedings, with a view to the possible application of criminal sanctions and refoulement, refusal of admission and expulsion, thereby seeking to present a comprehensive body of immigration regulations.

In this respect, the solutions adopted are also fully compatible with the international obligations assumed by Uruguay. In view of its importance, and because the Bill is fully in accordance with it, it is worth noting that article 22 of the American Convention on Human Rights (Pact of San José, Costa Rica) states that the exercise of the right of every person to move about in, to reside in, or to leave any country freely "may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others".

On the other hand, the Bill also seeks to regulate organized immigration, taking into account the country's demographic, economic, social and cultural needs whose satisfaction is in the interest of the State and is intended to improve the quality of life of the population, as stated in its article 1.

The Bill consists of an introductory title as well as three others which deal with the administrative organization of categories of migrants, grounds for refusal to admit migrants, their entry and sojourn, the refoulement and expulsion of foreigners, criminal and administrative sanctions, administrative remedies and judicial proceedings, entry, sojourn and departure controls, international transport enterprises, financial resources, organized immigration, Uruguayans abroad and final provisions.

6. The Bill and migration problems in the Common Market of the Southern Cone (MERCOSUR)

The States parties to MERCOSUR intend to draw up common regulations in respect of migration in the future, since the Treaty of Asunción contains no express references to the question of migration and the free movement of persons - which obviously has to be tackled at some stage in any integration process of a common market nature. However, since the Treaty states that the formation of a common market implies the free movement of goods, services and factors of production, it may be said that labour migration is implicit in the reference to the free movement of factors of production, which includes the free movement of the labour factor and hence the human factor.

Since MERCOSUR constitutes an integrated area with a functioning common market, its migration policy - or at least its most important aspects - must one day be common to all its members. As regards third countries, the first step must be taken through intergovernmental cooperation and legislative harmonization in order subsequently to bring about the adoption of uniform provisions ensuring a compatible common migration policy in respect of border controls and the gradual elimination of frontiers within the grouping so as to ensure the free movement of persons within the integrated area. As regards this latter aspect, namely, relations within MERCOSUR, it would not appear reasonable to maintain national migration policies since the area is one in which the free movement of goods, services and factors of production is to take place.

Nevertheless, there is no denying the fact that the free movement of persons invariably lags well behind the free movement of goods, services and capital because of the difficulties encountered in dismantling national migration policies and because the various obstacles to the free movement of persons cannot be overcome rapidly.

It is clear that, at the present time, since the individual is regarded as one of the factors of production that the Treaty of Asunción includes under the free movement heading, this point is of importance in view of the possibility of the nationals of States parties moving about within their territory in search of work and will most probably be the subject of common regulations in the near future.

In the meanwhile, and until such time as bilateral or multilateral migration provisions are negotiated and brought into force, the domestic legislation of each individual State party will remain in force; this fact is expressly recognized in article 2 of the Bill.

II. Special part

1. The introductory title of the attached Bill begins with an article describing the purpose of the law and emphasizing that it constitutes migration legislation having the twofold objective of regulating not only the entry and sojourn of foreigners in the country in accordance with the principle of spontaneous migration but also international migratory movements in the light of demographic, economic, social and cultural requirements, thereby affirming the importance of organized emigration.

The provisions that follow deal with the scope of the law and state that it is applicable to foreigners coming from any country with the following exceptions: 1. Persons from countries members of MERCOSUR insofar as derogations have been made on a bilateral or multilateral basis, and 2. Those enjoying special status (diplomatic officials, etc.) on the basis of international treaties signed and ratified by Uruguay.

2. Title 1 deals with institutional aspects in respect of bodies responsible for the application of the law and describes their general functions.

In accordance with the Bill's provisions, the administrative bodies competent to ensure the application of the law are the Ministry of the Interior, the National Migration Department (which is subordinate to the Ministry of the Interior) and the National Migration Council (which is part of the system of the Ministry of the Interior). The text then goes on to specify the powers and functions of each of these bodies and states that the Ministry of the Interior and the National Migration Department are responsible for the implementation of migration policy and that the National Migration Council acts as the advisory body in such matters. The Ministry of the Interior is empowered to delegate certain powers to the National Migration Department. Moreover, in order to make the services provided more efficient, the Ministry of the Interior is authorized to contract the information services and equipment required for the compilation of migration records.

3. Title 2 deals with "categories of migrants" - a matter of particular importance in that this provision can be used to classify each foreigner in a certain category or subcategory on the basis of his reasons for entering the country or his work.

A reliable classification of entry and sojourn categories will make it possible to create a valuable source of data facilitating statistical analysis, such information being indispensable for the purpose of evaluating the results of various migration programmes; these data will in turn be of particular importance in formulating migration policies.

The most important features of the "categories of migrants" set out in Title 2 can be summarized as follows:

(a) Unlike other legislation that classifies foreigners as "immigrants" and "non-immigrants" or "permanent and temporary", it was decided in the Bill to link categories of entry with a less abstract concept but one

which carried greater legal weight, such as "residence" which is the most important aspect of the "domicile" concept referred to in article 24 of Uruguay's Civil Code.

"Residence", if accompanied by the intention of settling permanently or temporarily in the country, offers an adequate conceptual framework for classifying the entry or sojourn of foreigners as "resident" (permanent or temporary) and "non-resident".

(b) The permanent residents heading, covering spontaneous and assisted immigrants, has been extended to include two new entry categories, namely, immigrants with capital and money to invest, in order to attract to the country foreigners with resources of their own or who transfer financial or technological resources with a view to engaging in productive activities considered to be in the country's interest.

(c) Retired persons, pensioners or persons of independent means have been included in a new subcategory of the "permanent residents" category in line with the regulations to be drawn up in respect of these persons as well as immigrants with capital specifying the requirements that must be satisfied by persons requesting entry into the country under the subcategories referred to in order to enjoy the benefits and exemptions provided for by law.

4. Title 3 deals with the grounds on which the entry and admission of foreigners may be forbidden. In this connection, special account was taken of article 37 of the Uruguayan Constitution which states that "in no case shall an immigrant be admitted who has physical, mental, or moral defects which may injure society". It was also borne in mind that the American Convention on Human Rights states that the right of entry may be restricted by law "to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others". Law No. 9604 of 13 October 1936 concerning undesirable foreigners, the 1988 Bill, the migration legislation of Costa Rica and Paraguay and the Bill on asylum submitted to Parliament this year - all of which have been referred to above - were also consulted.

As in the past, the various grounds for refusal of admission were enumerated, depending on whether the foreigners concerned suffered from any physical or mental defects and whether their capacity to work was diminished because of physical defects or personal history. Among the grounds for refusal to admit foreigners on the basis of their personal history that are of particular importance are those set out in article 34, paragraph 4, namely, offences under the ordinary law terrorist acts (provided for in the Extradition Treaty between Uruguay and Spain of 28 February 1996) and the one referred to in paragraph 9, which prohibits the entry of persons who are members of organizations that commit violent acts against democratic regimes or that pursue unlawful objectives - regardless of their political motives - by terrorist means.

5. Title 4, consisting of five chapters, deals with various situations connected with the entry and sojourn of foreigners in the country.

Chapter 1 sets forth the following principles:

(a) Foreigners wishing to enter the country as residents (permanent or temporary) must obtain a permit issued by the National Migration Department.

(b) Foreigners resident abroad wishing to enter the country as residents must obtain the required entry permit.

(c) "Non-residents", with the exception of those covered by article 33, paragraphs 4, 8, 9 and 10, do not require a permit to enter the country but may or may not require a consular visa in accordance with the agreements, treaties and legislation in force.

Chapter 3 offers foreigners the possibility of changing their migration category, in other words, of being classified in a category or subcategory different from that in which they entered the country. For example, "temporary residents" can become "permanent residents" and, exceptionally, "non-residents" can become "temporary residents".

The conditions, requirements, desirability and procedure for changing from one migration category to another will be laid down by law.

Chapter 4 deals with illegal entry or sojourn, indicating the reasons or circumstances that would place a foreigner in this situation, and authorizes the Ministry of the Interior to take the necessary measures in each specific case. The foreigner may be asked to regularize his situation as a migrant if, by virtue of his profession, period of residence, relationship to Uruguayans or other reasons, his sojourn may be regarded as being in the country's interest. Otherwise the Ministry of the Interior may inform him that he must leave the country within a certain time or issue an order for his expulsion.

Lastly, Chapter 5 covers cases which, because of non-compliance with the obligations assumed by foreigners, give rise to situations requiring the cancellation of their residence and sojourn permits as either permanent or temporary residents as well as those of "non-residents". The Ministry of the Interior is authorized to cancel the sojourn permits of foreigners who fail to satisfy the conditions on which they were permitted to enter the country.

6. Title 5 contains provisions concerning refoulement and expulsion.

It was considered desirable to make this distinction since the procedure and the authority competent to order these two measures vary.

Refoulement is the act by which the authority responsible for immigration control on entry into the country refuses a foreigner admission and orders his immediate return to the country of embarkation or origin, or a third country which will admit him. Refoulement is ordered when the foreigner, at the time of entering the country, fails to present the necessary

documents or presents forged documentation, when one of the grounds for refusal of admission provided for by law is applicable, or if he is discovered trying to enter the country by avoiding immigration control.

Expulsion, on the other hand, is an act ordered by the competent administrative or judicial authority by which a foreigner is expelled from national territory.

Expulsion takes place in the various situations covered by article 62. However there is neither expulsion nor refoulement if the foreigner has requested asylum in the country.

Under the Bill, the power to order expulsion is divided between the administrative and judicial authority, the former (Ministry of the Interior and National Migration Department) being empowered to order expulsion on grounds of a migration nature and the latter (Criminal Appeal Court) authorized to order expulsion on grounds of a non-migration nature. However, it has been considered logical and in line with the administrative nature of migratory matters that any initiative in ordering the expulsion of a foreigner should be taken by the Executive.

Another important point that is regulated by the Bill concerns rejection of a request for extradition; it does not exclude the possibility that a foreigner may be expelled on one of the grounds provided for in the law but makes an exception of the grounds set out in article 34, paragraphs 4 and 9, if the rejection is based on a political offence plea. This formulation corresponds to that contained in the Bill on asylum and seeks to avoid contradictory expulsion or extradition decisions by using the criterion of prevention as the decisive factor, in other words, the request submitted in the first place.

7. Title 6 contains a description of specific migration-related criminal offences and provides for a system of administrative penalties. The fact that it is proposed to characterize such offences reflects the increasing need for social protection in response to illegal immigration, which is not only increasing but also assuming new forms and is being supported by intermediaries who profit from the needs of those who, for various political, economic, criminal and other reasons, fail to satisfy the conditions laid down by legislation for legal entry into the country.

The criminal offences in question are enumerated in the migration legislation of most countries, and that of Chile, Costa Rica, Paraguay and Switzerland was in particular consulted when the Bill was being drawn up.

Chapter 2 empowers the National Migration Department to impose administrative fines of specific amounts on employers and the proprietors or managers of hotels and boarding houses, as well as on international transport enterprises, that violate the prohibitions or fail to comply with their obligations under the law.

8. Title 7 consists of two chapters which refer to the procedural guarantees enjoyed by wrongdoers. Chapter 1, after recapitulating the administrative remedies listed in article 317 of the Constitution, specifies

remedies in connection with expulsion, which are handled as a matter of priority and have the effect of suspending the decision impugned until such time as a final decision is reached at the administrative level.

Chapter 2 deals with judicial procedures and lays down the following rules:

A. Offences connected with migration are dealt with by the ordinary criminal courts.

B. Criminal proceedings are initiated on the basis of a substantiated complaint by the National Migration Department - an approach that brings into harmony the administrative nature of migration and the need for a certain amount of flexibility in this matter, as well as the possibility, in certain cases, of exercising the option referred to in D below.

C. The Criminal Appeal Court handles any cases of expulsion that have to be referred to the judicial authorities; it does so at a single hearing since its decisions involve foreigners and their effectiveness depends on their being taken as a matter of urgency without affecting the legal guarantees implying the intervention of a judicial court - guarantees that are strengthened by its collegiate nature.

D. In the case of certain migration-related offences committed by a foreigner, the Administration may decide to bring criminal charges or call directly for his expulsion, thereby exercising a discretional power based on expediency or appropriateness.

9. Title 8 and its three chapters contain provisions regulating the entry, sojourn and departure of persons.

The first of these chapters, apart from making it compulsory for persons to enter and depart from the country at specific authorized points, indicates the documentation that must be presented by foreigners at the time of migration control, making a distinction between foreigners entering the country as permanent and temporary residents, on the one hand, and non-residents on the other.

Chapter 2 which concerns "sojourn control" makes it illegal to give work to foreigners who, under the law, are not entitled to engage in gainful employment depending on whether they are temporary residents or non-residents.

Similarly, it makes it illegal for owners, administrators or managers of hotels, boarding houses or similar establishments to provide accommodation to foreigners who are illegally in the country.

Chapter 3 contains provisions on departure control, for both Uruguayans as well as foreigners.

10. Title 9 specifies the responsibilities of international means of transport, which are required to submit to the controls laid down by law, and are responsible for the transport of passengers and crew as laid down.

The law also proclaims as a public duty their obligation to carry foreigners who have been expelled out of the country; this obligation is limited to one seat when the vehicle has no more than 200 seats and 2 seats if it has more.

11. Title 10 indicates the financial resources of the National Migration Department, which consist of the proceeds from the services it provides, the amounts appropriated under the general budget, donations and bequests received and the fines imposed in the exercise of its functions.

12. Title 11, which deals with organized immigration, contains provisions intended to promote the immigration of foreigners or groups of foreigners in accordance with the country's requirements.

Chapter 1 states that such promotion activities are designed to secure qualified manpower to make good the present shortage when such manpower is a source of scientific and technological know-how, when the persons concerned settle in areas of the country whose development is being promoted as a matter of priority and when they bring in capital for investment in productive activities.

The integration of such immigrants in the economic life of the country is to be achieved through planned migration programmes reflecting needs highlighted by development or investment plans.

Chapters 2, 3 and 4 define subcategories of assisted immigrants, immigrants with capital and investors, and retirees, pensioners and persons of independent means respectively; the advantages, benefits and privileges to which they are entitled are also described.

Lastly, chapter 5 describes the regime applicable to frontier immigrants, seasonal workers and sugar cane workers.

13. Title 12 lays down general principles in respect of Uruguayans abroad, and deals with the functions of the competent bodies, emigration and the return of Uruguayans residing abroad, as well as of their foreign spouses, children and parents.

In recent years the rate of migration has clearly outstripped the pace at which migration legislation has been updated and a large number of aspects of migration no longer covered by it. In this new context, some of the traditional countries of immigration such as ours will eventually also become countries of emigration and encounter difficulties due to the fact that their legislation is designed only to regulate various aspects of immigration.

For this reason, it was considered that the Bill should proclaim certain fundamental principles enabling Uruguayans residing abroad to enjoy the best possible legal and social protection.

14. Lastly, Title 13 states that the Executive will, if necessary, modify the organization of the National Migration Department and bring its administrative structure into line with its functions, and will accordingly amend the law on the subject. In this connection, it should be noted that

despite its scope, which suggests that it deals with migration problems in detail, the Bill is confined to the enunciation of fundamental principles which will be elaborated on by the adoption of appropriate regulations.

In the view of the Executive, the attached Bill contains long-overdue responses to migration problems and offers suitable and effective solutions that will make it possible to cope with the new and at times serious situations which arise in connection with the entry and sojourn of foreigners in Uruguay and are regarded as being fully compatible with the provisions of article 37 of the Constitution and the obligations assumed by the country when it signed and ratified the international instruments on human rights pertaining to migration.

Note: The subsequent annexes have been placed in the secretariat archives and may be consulted on request.

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Report of the Secretary-General

ANNEX

Submission from Human Rights Advocates
dated February 1998

GE.98 - 13062

WORKING GROUP FOR MIGRANT WORKERS - TARGET AREAS & SOLUTIONS
Working Paper submitted by Human Rights Advocates, an NGO with consultative status, Category II

1. The number of migrant workers around the world has steadily increased over the past decade due to the impact of global economic restructuring, escalating poverty, and violent conflict.[1] These individuals, in search of economic opportunities, face abuse and disdain from their host countries. This paper will discuss two of the varied problems facing migrant workers worldwide. The first problem, border patrol violations, arises out of human rights violations by government officials. The second problem, abuse of migrant women, arises in part out of society's worldwide stereotype of women. The first half of this paper documents human rights violations in these areas and proposes possible solutions. The second half of this paper proposes what mechanisms this Working Group should utilize to most effectively combat the abuse of migrant workers on a global scale.

I. HUMAN RIGHTS VIOLATIONS AGAINST MIGRANT WORKERS WORLD WIDE

A. BORDER PATROL VIOLATIONS

2. Migrant Workers crossing borders worldwide are denied the basic rights to life and subjected to degrading treatment. HRA has submitted reports on these violations for many years, and this paper will update past reports.[2] Because of the sheer size of migration between Mexico and the United States, these reports focus on the problems along the 2,000-mile border between the two countries. However, these problems are intended as examples of practices worldwide.

1. Abuse by Border Patrol Agents

3. The United States INS (Immigration and Naturalization Service) shooting policy allows agents to shoot at illegal border crossers in the following situations: self-defense, in defense of another officer, or in the defense of an innocent third party. These guidelines fall within internationally accepted norms aimed at protecting borders. However, guidelines implemented by

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[1] "Gender and Migration", Network News, Fall 1997.

[2] Written statement submitted by Human Rights Advocates on Measures to Improve the Situation and Ensure the Human Rights and Dignity of All Migrant Workers, E/CN.4/1997/NGO/54,¶9 (17 March 1997).

governments worldwide are often dismissed, violations are prevalent, and violators are rarely or leniently punished.[3]

4. In 1994, a 22-year-old Brownsville resident was shot in the leg by border patrol agents who claimed he was smuggling immigrants. It was later discovered he was merely hunting.[4] In a similar incident, an 18-year-old goat herder out hunting rabbits with a 70-year-old .22 caliber shotgun was shot and killed by Marines (working in conjunction with the border patrol). It took nearly forty minutes for government officials to seek medical attention for the boy.[5]

5. Similarly, in June of 1997, a Chinese man believed to be a Chinese citizen and one of 41 Chinese migrants hoping to get to western Europe, was shot and killed by Lithuanian officials.[6]

2. Policies Leading to Increased Border Patrol Violations

6. Many countries have responded to situations of increased illegal migration by sending additional government agents to patrol the border. With a rush to place more border patrol agents and military troops at the border, these agents are receiving less training and are less closely scrutinized before being hired. The lack of training only increases the likelihood of agents committing more human rights violations against migrants crossing the border and a higher potential for border deaths. With more agents along borders, the possibilities of confrontation alone are significantly increased.[7]

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[3] Americas Watch, Brutality Unchecked: Human Rights Abuses Along the Border with Mexico, 1, 4 (1992).

[4] Roberto Gonzales, "In the Continuing Saga of Border Patrol Abuses, Violent Confrontation is on the Rise", Civil Wrongs, February 1996.

[5] Jeff Barnett, "Congress to Call Hearings on Border Shooting", http://www.nmsu.edu, August 1997.

[6] "Illegal Migrant Shot and Killed by Lithuanian Police", Deutsche Presse-Argentur, June 19, 1997.

[7] Martin Kasindorf, "Crackdown Begins Along Texas Border", USA Today, August 25, 1997.

7. In the United States, the number of border patrol agents doubled between 1993 and 1997.[8] In 1997, President Clinton unveiled a plan to send an additional 1,000 new border patrol agents and 348 new inspector for ports of entry along the United States-Mexico border.[9] The budget for the Immigration and Naturalization Service (INS) has more than doubled in the past five years. A General Accounting Office report revealed that the INS budget topped off at $3.1 Billion in 1997, up from $1.5 Billion in 1993.[10]

8. Mexico has also increased its military presence along the Mexico-Guatemala border in an effort to curb the wave of Central and South Americans trying to make their way to the United States.[11] The increase in military presence has increased the number of human rights abuses along the Mexico-Guatemala border.[12] In 1997, a Guatemalan man en route to visit his brother in Mexico City was stopped by Mexican immigration officials, pistol-whipped, and robbed of his clothes and money.[13] A Salvadoran citizen who made it through Mexico was stopped in Ciudad Juarez along the U.S.-Mexico border, detained for three days, fed only once, and cursed before being "dumped" in Guatemala.[14]

9. Radical steps to patrol the South African border are also planned to stop the influx of migrants from neighboring countries. South Africa has experienced a flood of illegal African migrants fleeing economic and social instability. All of this in response to the more than 180,000

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[8] Gary Martin, "INS Plans Changes to Trim Civil Rights Complaints", San Antonio Express-News, December 23, 1997.

[9] "U.S. Injects Fresh Funds to Fight Illegal Immigration", Agence France-Presse, January 14, 1997.

[10] Gary Martin, "INS Plans Changes to Trim Civil Rights Complaints", San Antonio Express-News, December 23, 1997.

[11] Hayes Ferguson, "Mexico Tightening Southern Border", Rocky Mountain News, March 3, 1996.

[12] Id.

[13] Hayes Ferguson, "Mexico Gets Tough on Southern Border", The New Orleans Times-Picayune, February 18, 1996.

[14] Id.

migrants who were repatriated to Mozambique, Zimbabwe, and Ethiopia in 1997.[15]

10. Along the Thai-Burma border, the Shan, long considered a source of seasonal labor, are being turned away and therefore forced to camp out along the border with Burmese refugees.[16] In an effort to end these camps and the waves of people entering, Thai officials have pressured some groups into leaving. The Shan are left defenseless as Thai officials "mysteriously" disappear just before Burmese authorities attack these refugee camps.[17]

3. Environmental Deaths

11. With increased numbers of government officials patrolling the borders, migrants are forced to take desperate risks in seeking out more dangerous routes and methods of entry. Since these deaths, also known as "environmental deaths", occur one or two at a time, they are rarely noticed. However, these more dangerous alternatives are an increasing phenomenon worldwide.

12. In August of 1996, near Douglas, Arizona, a group of Mexican citizens were trying to enter the United States through an underground drainage pipe that runs from Mexico to the United States when a storm sent a torrent of rainwater through the pipe, killing five men and one woman.[18] That same year, 19 immigrants died of heat stroke and other exposure-related causes while trying to evade a border patrol checkpoint in Kennedy County, Texas.[19] In a separate incident, four Mexican women died of heat exhaustion and dehydration near Falfurrias in South Texas.[20] Two weeks later, a fifth woman was found. These five women were 15 miles from a

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[15] Mary Braid, "South Africans Discover Xenophobia as Foreigners Flood in Looking for Work", The Independent-London, August 23, 1997.

[16] Richard Ryscavage, "Burmese Refugees in Thailand", House Committee on International Relations, April 16, 1997.

[17] Elizabeth Moorthy, "With the Karen on the Thai Border", The Asian Wall Street Journal, March 5, 1996.

[18] Sam Howe Verhoek, "Silent Deaths Rise as Migrants Cross Mexico Border", New York Times News Service, August 24, 1997.

[19] Id.

[20] Pauline Arrillaga, "Drought Takes Toll on Illegal Immigrants", Associated Press, June 7, 1997.

border patrol checkpoint.[21]

13. A recent University of Houston report estimated that 1,185 migrants died between 1994 and 1997 as they attempted to cross the border or evade border patrol checkpoints along the 2,000 mile U.S.-Mexico border.[22]

14. This wave of environmental deaths is not limited to the United States. In South Africa, it was discovered that a pride of lions were responsible for eating a Mozambican man trying to cross illegally into South Africa.[23] The lions were believed to be responsible for killing three other Mozambicans. In 1997, 11 people were eaten by wild animals trying to enter South Africa, including a woman and her two-year-old son.[24] There are also reports of Zimbabweans trying to swim the Limpopo River being eaten by crocodiles.[25]

15. Similarly, in 1997, Polish guards patrolling the 75-mile border with Lithuania, caught an Afghan family of six huddled in the bushes among a heavy blanket of snow.[26] On the same day, other guards stumbled upon a path that led to the discovery of 41 abandoned migrants from Bangladesh, Nepal, Pakistan, and Sri Lanka en route to Western Europe.[27] Thousands of Kurds, Bulgarian, and Turkish Muslims and Romanian gypsies are camped in garbage dumps near the Neisse River awaiting a chance to wade across into Germany.[28]

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[21] Rad Sallee, "The Border's Tragic Toll", Houston Chronicle, August 11, 1997.

[22] "Study Links Border Patrol Enforcement with Migrant Deaths", National Network for Immigrant and Refugee Rights, August 13, 1997.

[23] Mary Braid, "South Africans Discover Xenophobia as Foreigners Flood in Looking for Work", The Independent-London, August 23, 1997.

[24] Id.

[25] Id.

[26] Neil Bowdler, "Leaking Frontier Alarms the EU as Smuggles Migrants Seek Gateway to the West", The Guardian, November 15, 1997.

[27] Id.

[28] Id.

4. Physical Abuse and Humiliation by Border Patrol Agents

16. Migrants crossing border not only encounter these dangerous conditions, but are often the target of cruel and degrading treatment. Beatings and other forms of physical and humiliating abuse are not uncommon. These types of abuses are aimed at particular groups, and result in the victimization of nationals and non-nationals alike.

17. In January of 1996, along the Texas border, Eloy Trujillo, a 35-year-old U.S. born American citizen who had lived most of his life in Brownsville was followed by border patrol agents, ordered out of his car, beaten, and handcuffed to a fence as his 86-year-old grandmother watched. He was so badly whipped that he required half a dozen stitches and hospital treatment before being officially arrested.[29] Later in 1996, a 21-year-old beauty queen serving as a good-will ambassador was detained by border patrol agents who lifted her skirt, felt her belly, and accused her of entering the United States to have a baby.[30] In a 1993 case, a female Mexican illegal immigrant claimed she was raped in a van by a U.S. Border Patrol agent. The agent was first charge with rape and kidnaping, but the charges were later dropped in exchange for a no contest plea to a much lesser offense of "attempting transporting of persons for immoral purposes."[31]

18. In 1996, two Israeli border policemen beat six detained Palestinian laborers who illegally crossed into Israel to work.[32] That same month, there were reports of 11 Palestinian being beaten and physically harassed by border policemen. No official complaints were lodged for fear of retaliation.[33]

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[29] Robert Gonzales. "In the Continuing Saga of Border patrol Abuses, Violent Confrontation is on the Rise", Civil Wrongs, February 1996.

[30] Id.

[31] Nancy Nusser, "California Beating Incident Provokes Mexican Outcry", Cox News Service, April 11, 1996.

[32] Ina Friedman, "Fact of Life: Acts of Brutality by Israel's Border Police, as Caught on Tape, are Nothing New", Baltimore Jewish Times, November 29, 1996.

[33] Id.

5. Attacks on Migrants by Private Persons

19. The publicity caused by increases in the numbers of border patrol agents along borders have also produced strong xenophobic feelings, strong animosity, and vigilante groups. This too increases the likelihood of migrant worker abuses.

20. In Southern California, a group known as "Bob's Boys" roam eastern San Diego County armed with semi-automatic rifles looking for migrants entering the United States. Using violence if necessary, the vigilantes hold the illegal migrants at gunpoint until border patrol agents arrive.[34] The border patrol is aware of these vigilante groups and has done little to discourage such groups despite their increased numbers.[35]

21. In South Africa there are experiences with similar xenophobic sentiment. As street vendors from all over Africa scattered for cover, a trader from Senegal was beaten with bricks by South African street sellers in August of 1997. It was the second attack on a foreign/migrant street vendors in less than a week.[36]

22. In Israel, it was discovered that Israeli border police had printed T-shirts depicting a fervently Orthodox Jew and a Palestinian tied to a tree. The T-shirts were intended to allude to the guards' toughness where the tree represented the guards.[37]

23. Given that these human rights violations exist worldwide, it is imperative that responsive action be taken immediately to address them.

B. RECOMMENDATIONS FOR ADDRESSING BORDER PATROL VIOLATIONS

24. It is imperative that host/receiving and sending countries take affirmative steps to protect the rights of migrant workers and their families. By taking the appropriate steps, it will held

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[34] John Hisock, "Vigilantes Ride Out to Stem Human Tide from Mexico", The Daily Telegraph-London, May 19, 1997

[35] Id.

[36] Mary Braid, "South Africans Discover Xenophobia as Foreigners Flood in Looking for Work", The Independent-London, August 23, 1997.

[37] Binyamin L. Jolovsky, "Israel's New Embattled Minority", The Washington Times, December 26, 1996.

reduce border patrol misconduct, human rights violations against migrant workers and their families, and possibly reduce the number of border deaths

1. Educational Solutions

25. Efforts to improve situations along borders must include increased and continuous training and education for border patrol agents rather than increased presence. The education should include an intense and structured curriculum that includes areas of study in Constitutional laws, substantive human rights laws and violations, and the Universal Bill of Human Rights.

26. Cultural and language training should also be required curriculum as it may increase the likelihood of communication (and decrease the likelihood of confrontation) between migrant workers and border patrol agents. Misunderstandings and miscommunication would decrease as government agents along borders are better equipped to verbally communicate with migrants. Border Patrol agents should possess knowledge of cultural, ethnic, and language characteristics of the most prominent groups so as to aid them and not lose them in the shuffle.

2. Social Solutions

27. Sending and Host countries must work together to provide and endorse public service announcements in the appropriate language along their borders. These joint-effort public service announcements should be aimed at curbing the number of environmental deaths experienced as migrants attempt to evade border patrol agents and/or border patrol checkpoints by choosing more dangerous routes and methods of entry. This would be an educational warning system broadcast through various media forms (i.e. radio, television, newspaper, etc.) aimed at saving lives and not merely curbing migration numbers.

28. One such program already exists along the South Texan-Reynosa, Mexico border. Operation "Stay Out, Stay Alive" is aimed at providing information as to recent border deaths, conditions in the Rio Grande, and warning migrants of the legal consequences for crossing into the United States illegally.[38]

3. Legal Solutions

29. A grievance procedure must be established to address border patrol violations against

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[38] Martin Kasindorf, "Crackdown Begins Along Texas Border", USA Today, August 25, 1997.

migrant workers and their families. The most effective procedure must be established as a joint effort between the host and sending countries in any given region and must include the following components:

- an established worldwide code of conduct regulating border patrol agents' behavior and conduct in confrontational and other related situations,
- civil and criminal liability (as a deterrent) within the grievance procedure that would extend beyond reprimand or dismissal of a border patrol agent for human rights violations or breach of the established code of conduct,
- a joint effort with consular offices along respective borders to aid migrant workers in processing claims of abuse,
- a guarantee of anonymity for migrant workers and their families so as to encourage meritorious complaints and reduce the fear of retaliation,
- an inquiry procedure for investigative action once a complaint has been lodged by a victim so as to decide whether criminal and/or civil action is required, and
- A compliance component by which governments of host countries can report periodically on steps taken to alleviate problems with border patrol violations against migrant workers and their families, and any progress made or solutions reached. Sending countries should also file compliance reports on efforts made to aid host countries in achieving progress.

C. DOMESTIC AND EMPLOYMENT ABUSE AGAINST WOMEN MIGRANT WORKERS

30. The following is excerpted from a report that was submitted by Human Rights Advocates in response to the Commission on Human Rights' Resolution 1997/13 in October of 1997. The International Organization for Migration estimates that there are over 50 million women in migration worldwide, and over half the immigrants to the United States are now women. Due to their marginalization both as women and as migrants, women migrants find themselves in situations in which they are vulnerable to violence and abuse. They tolerate abuses from their spouses and their employers because they are poor and afraid. They fear losing their jobs, they fear no one will believe their story, they fear losing their children.

31. Most migrant women do not know the language of the host country; many are uneducated and do not know they have rights that are being violated; many do not know where to turn for help, thus the violations go unreported. And the women continue to suffer in silence.

32. The following are the types of categories of problems facing migrant women around the world: a global social acceptance of domestic abuse; government policies of confiscating non-nationals' passports at the port of entry; migrant women's ignorance of their legal rights and lack of accessibility to social services; and lack of employment grievance procedures for sexual harassment.

D. RECOMMENDATIONS FOR ADDRESSING "VIOLENCE AGAINST MIGRANT WOMEN"

33. Many countries, including South Africa, the Philippines, and China, have established committees to attempt to solve the problems of abuse of female migrant workers through legislation.[39] Governments realizing a problem exists is the first step to finding solutions to migrant women's problems. However, drafting legislation will not solve the de facto abuse that persists even after legislation is enacted. For example, many of the countries who signed the Convention on the Elimination of All Forms of Discrimination Against Women continue to violate most of the rights enumerated therein.[40] Therefore, countries must take a holistic approach to the problem including social and legal solutions.

1. Social Solutions

a. Education and Prevention

34. Education is the best, most cost-effective measure available to increase awareness and promote intervention at various levels.

Cooperation Between Health Clinics, Legal Services, and Social Services

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[39] "U.N. - Population: Migration, Violence Against Women Top Concerns," Inter Press Service, January 30, 1997; Thalif Deen, "U.N. - Women: U.N. Launches Fund to Prevent Gender Violence," Inter Press Service, June 17, 1997.

[40] Written statement submitted by Human Rights Advocates on Measures to Improve the Situation and Ensure the Human Rights and Dignity of All Migrant Workers, E/CN.4/1997/NGO/54,¶9 (17 March 1997).

35. For the education process to succeed local health clinics, social service providers, legal services, and community colleges must collaborate to form a network accessible to women migrant workers. The woman needs assistance in all these areas to escape the abuse by her husband or her employer.

Proper Training

36. There must be a greater effort to educate all clinic staff about domestic violence among the migrant women population. Physicians and mid-level practitioners must attend the training along with other staff members. Physical exams findings, including unexplainable or inconsistent injuries, self-defense injuries, and overt signs of battering will often be discovered by this group of clinicians. Being able to chart findings and make the proper referrals is not enough; continuity of care is crucial. Practitioners should possess knowledge concerning safety plans, danger assessments, and area resources.

37. Moreover, the social/clinician workers must speak the language and understand the culture of the migrant. Cultural barriers between social workers/clinicians and women migrants prevent accurate statistics from showing the number of migrant women who are actually abused.

Global Cultural Training

38. To solve the cultural problem related to domestic abuse, all countries must have social services to educate both women and men on domestic violence. All men and women must learn that domestic violence is not acceptable in any culture. This can start as early as elementary school. All boys and girls need to learn domestic violence is wrong. A woman never "asks for it". A curriculum must be developed starting in elementary through high school where students can discuss the issues associated with domestic violence. Furthermore, Health Clinics must offer psychological counseling to men and women so both will learn how to deal with their problems in a non-violent manner.

Outreach programs

39. To further assist in solving the problem of lack of documentation and isolation of women migrant workers, it is imperative countries develop outreach programs. Outreach programs are the link between the migrant worker and the legal and social service providers that assist in

finding solutions to the abuse. Some programs in the United States can be used as a model.

40. In 1995, the Migrant Clinicians Network, in partnership with the Centers for Disease Control and Prevention (CDC), Family and Intimate Violence Prevention Team and the Lideres Campesinas, a self organized group of farm worker women who have come together to address problems in their communities, began a project to develop and evaluate training for Hispanic migrant farm worker women in the area of domestic violence education and prevention.[41]

41. In order to educate the women farm workers, Lideres Campesinas sends ex-farm workers, who are familiar with migrant farm workers lives, to the fields during the day and the labor camps in the evenings to inform workers where social services are available. Through the social services women can be treated for domestic abuse and clinicians can ask questions to discover whether the women are also being abused at work.

42. Other types of outreach programs consist of monthly one-stop clinics/conferences. Once a month the legal service or social provider in the community has a conference to address the majority of migrant workers needs such as the following: education, farm worker safety, health, legal services, and immigration.

43. Through these outreach programs the word starts to spread among women migrant workers that they have legal rights and options. Furthermore, these organizations working directly with migrant women can report violations of abuse directly to the United Nations.

b. Government Funding

44. Education cannot exist without governments funding the legal and social service programs. Governments must make women's rights a priority. For example, governments should continue or start to fund Women's Clinics where women have access to birth control and gynecological exams without charge.

c. Media Attention

45. In order to continue funding for these programs, social service providers must contact local and national media to expose to the public the violence facing migrant women. The media must rally for public support to increase pressure on legislative bodies to stop cutting funding for

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[41] Rachel Rodriguez, "Suffering in Silence: Domestic Violence and Migrant Women," Migrant Clinicians Network, April 1995.

c. Legal Cause of Action for Abuses by Employers

State/National Cause of action

51. All countries should have a legal cause of action for sex discrimination and sexual harassment (United States Title VII can be used as a model). Although it is difficult and painful for a plaintiff to win a harassment and discrimination case in the United States, the cause of action and remedy exists.

Employer Grievance Procedure

52. In addition to a legal cause of action, all employers must have a grievance procedure for all employees to explain the harassment or abuse by the employer. If employers fail to have such a procedure they should be fined according to their net worth.

53. Women's rights activists propose that it be made mandatory for organizations to have a code of conduct, to institute an inquiry with at least one woman to look into grievances, and if the accused is found guilty of the charges, to take legal action on behalf of the victim.

d. Women in management and as foreman/supervisors

54. Many migrant workers say that there needs to be more women in management/foreman positions. Women complain of men flirting with the young women in the fields. Women do not feel comfortable complaining to a man they perceive as insensitive. Furthermore, management should speak the language of the majority of the migrant workers so that the workers will be able to communicate the complaint to supervisors.

II. THE WORKING GROUP"S ROLE IN ADDRESSING THE PROBLEMS FACING MIGRANT WORKERS WORLD WIDE

55. As of December 1997, nineteen years after the United Nations General Assembly established a working group to draft a treaty on the rights of migrant workers and members of their families, only nine countries have ratified the Migrant Worker Convention: Morocco, the Phillippines, Egypt, Colombia, Cape Verde, Seychelles, Sri Lanka, Bosnia and Herzegovina, and Uganda.[43] Only two additional states, Chile and Mexico, have signed it. In essence the treaty on migrant workers is completely ineffective at present for solving the problems migrant workers

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[43]Report of the Secretary-General, "Measures to Improve the Situation and Ensure the Human Rights and Dignity of all Migrant Workers," E/CN.4/1998/75 (10 December 1997).

social and health service providers.

2. Legal Solutions

a. Drafting Human Rights Plan Addressing the Violence Against Women Migrant Workers

46. The Philippine Human Rights Plan, 1996-2000, which was prepared with the full participation of the National Commission on the Role of Filipino Women, gives special focus to women's human rights. To further the advancement of women Congress has passed 1995 Anti-Sexual Harassment Act; the Magna Carta for overseas contract workers, which seeks to institute policies for the welfare of migrant workers, their families and overseas Filipinos; and an act to provide credit assistance to women in micro and cottage businesses.

47. These plans are affirmative government methods to acknowledge and end the violence against women migrant workers.

b. Specific Practices that Must be Changed

Government Confiscation of Passports

48. Governments, such as Saudi Arabia, must overturn laws that force domestic workers from abroad to surrender their passport upon arrival. Critics say official state policy increases migrant women's vulnerability to exploitation and abuse by institutionalizing employer control over the freedom of movement of domestic workers.[42]

Employer Confiscation of Passports

49. In countries where the employer, rather than the government, confiscates the migrant worker's passport the practice must be criminalized. Countries must create a stiff penalty for any person who confiscates a migrant worker's passport. The penalty, either in the form of incarceration for several years and/or a high fine must serve as a deterrent.

50. This criminal law in conjunction with the proper local social and legal services to discover who is violating the law could assist in eliminating the practice.

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[42] Michael Sheridan, "Manilla issues sex warning to migrant maids", Sunday Times-London, February 2, 1997.

face world wide and there is no other body able to address human rights violations of migrant workers. Human Rights Advocates believes it is critical that the Working Group on Migrant Workers continue its work until the treaty goes into effect. Further, it must have authority to address specific violations.

A. THIS WORKING GROUP MUST ADDRESS THE PROBLEMS FACING MIGRANTS WORLD WIDE

56. Treaty bodies of the United Nations could address the problems of migrant workers world wide, however, due to severe backlogs in reporting mechanisms it is unrealistic that they would be able to focus on migrant worker issues specifically.[44] The International Labor Organization (ILO), the organization that traditionally would have jurisdiction over worker issues, is also unable to address violations against migrant workers. Because the process for raising complaints under the ILO structure requires that governments or employers or worker organizations raise the violations, migrant workers violations simply have not been considered. Thus, at this time the Working Group is the only body specifically addressing the human rights violations against migrants and their families.

57. After studying the success of other working groups, the following are suggestions for the Working Group on Migrant Workers to consider so that it may carry out the mandate from the Commission to "gather all relevant information from Governments, NGOs . . . on the obstacles existing to the effective and full protection of the human rights of migrants." (Commission on Human Rights Resolution 1997/15.)

B. SUGGESTED RECOMMENDATIONS FOR THE WORKING GROUP TO ACHIEVE ITS MANDATE

58. It is imperative that the Commission renew the Working Group for another term to fulfill the Commission's goal to strengthen the promotion, protection and implementation of the human rights of migrants and that it be given authority to investigate actual violations. Human Rights Advocates recommends that this Working Group look to procedures developed by the Working Groups on Enforced or Voluntary Disappearances and on Arbitrary Detention. Those working

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[44] Final Report on Enhancing the Long-Term Effectiveness of the U.N. Human Rights Treaty System, E/CN.4/1997/74.

groups developed more judgmental monitoring procedures that may be successful for effectively dealing with violations occurring along the borders of nations.

59. When the Working Group on Enforced or Involuntary Disappearances was formed in 1980 the group only had authority to: 1) examine questions relevant to enforced or involuntary disappearances; 2) seek and receive information from governments and non-government organizations (NGOs); and 3) to bear in mind the need to be able to respond effectively to information that came before it and to carry out its work with discretion.[45]

60. In 1984 the Working Group for the first time was given investigative authority to "help eliminate the practice of forced or involuntary disappearances."[46] Similar to the Working Group on Enforced or Involuntary Disappearances this Working Group needs to have the authority to take affirmative steps to eliminate human rights violations. Those affirmative steps should include an adjudicatory procedure for investigating violations of migrant workers' rights.

61. Another recommendation is for the Working Group to look at the procedure of the Rapporteur on Extrajudicial, Summary or Arbitrary Executions. That Rapporteur developed a system of reviewing individual cases which included sending a questionnaire to governments concerning the cases, and following up with letters to both the governments and the complainants.[47] The Working on Migrant Workers should consider a similar procedure to include the receiving countries in the process. The creation of such a procedure should encourage greater participation by the host countries.

62. The Working Group on Migrant Workers also should seek ways to cooperate with other Working Groups and Rapporteurs working on similar issues. For example, the Working Group on the Elimination of Violence Against Women is also looking at abuses confronted by migrant women. The Working Group on Migrant Workers should ask for input from that Working Group on how it could support its work on that problem without duplicating its work.

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[45] David Weissbrodt, "The Three "Theme" Special Rapporteurs of the UN Commission on Human Rights", 80 AM. J. INT'L., 685, 685-95 (1986).

[46] Id.

[47] Frank Newman & David Weissbrodt, International Human Rights: Law, Policy, and Process (2d ed. 1996).

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INFORMATION AND COMMENTS RECEIVED FROM GOVERNMENTS, UNITED NATIONS BODIES, SPECIALIZED AGENCIES, INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS

Report of the Secretary-General

ANNEX

Reply of the Government of Guatemala
dated 20 January 1998

GE.98-13131 (E)

The Permanent Mission of Guatemala to the United Nations and other International Organizations in Geneva presents its compliments to the Centre for Human Rights and attaches herewith the reply of the Government of Guatemala to the questionnaire prepared by the members of the Intergovernmental Working Group of Experts on Human Rights of Migrants, requested by the Secretary-General in note G/SO 212/26 (1), of 2 December 1997, pursuant to Commission on Human Rights resolution 1997/15.

The Permanent Mission of Guatemala takes this opportunity to convey to the Centre for Human Rights the renewed assurances of its highest consideration.

Geneva, 31 March 1998

REPLY OF THE GOVERNMENT OF GUATEMALA TO THE QUESTIONNAIRE PREPARED BY THE INTERGOVERNMENTAL WORKING GROUP OF EXPERTS ON HUMAN RIGHTS OF MIGRANTS

1. What are the latest figures or estimates for:

(a) Total population, including non-nationals, preferably by nationality of origin:

The data reported by the National Institute for Statistics on the basis of the National Population Census conducted in 1994 indicate that Guatemala has a population of 9,315,035 persons.

According to information provided by the Directorate-General for Migration of Guatemala, the number of legal residents by nationality is as follows:

United States of America	20,000
El Salvador	13,000
Nicaragua	9,000
Honduras	8,000
Costa Rica	6,000
Republic of China	4,000
Germany	3,900
Canada	2,500
Korea	2,200
South America	2,400
Other European countries	1,900
Africa	100
Without papers:	
Various countries	427,000

(b) Number of nationals abroad, preferably by country of residence:

The data below are estimates prepared by the Directorate-General for Migration.

United States of America	1,000,000	Includes asylum-seekers, legal residents and residents without papers
Canada	100,000	Includes legal residents and refugees
Mexico	150,000	Includes legal residents, residents without papers, refugees and seasonal migrant farm workers
Central America	70,000	
South America	30,000	
Europe	10,000	

(c) Non-nationals having authorization to work in the country:

According to the records of the Ministry of Labour and Social Security there have been 803 authorizations in all.

(d) Estimate of irregular migrants, including visa abusers, by country of origin:

The Directorate-General for Migration reports the following in this connection:

El Salvador	30,000
Honduras	25,000
Nicaragua	20,000
Ecuador	8,000
Peru	7,200
Colombia	6,000
Mainland China	4,000
Jordan	2,500
Iraq	2,000
India	1,800
Africa	800

2. What measures are being taken to strengthen the promotion, protection and implementation of the human rights of migrants, such as:

(a) Legal measures:

The Government of the Republic is submitting a new Migrants' Code intended to modernize and standardize regional migration policies on the basis of respect for the rights of all individuals as human beings, regardless of migrant or other status.

Similarly, Government Decision No. 316-95 of 18 July 1995 streamlined the procedure for work permits for foreigners, which now take only 12 days to obtain. Other efforts have also been made to help provide migrant workers with the appropriate papers.

(b) Public information and education:

The Ministry of Foreign Affairs, through its Department of Consular Affairs, the Ministry of Labour and Social Security and the Directorate-General for Migration have been working together to foster activities which are designed to guide migrants and ensure that their rights are not violated and which include the following:

Radio advertisements in Spanish and the main Mayan languages, intended for Guatemalan seasonal migrant farm workers in Mexico, alerting them to the need to use border posts and to possess appropriate travel documents.

Information pamphlets for Guatemalans travelling outside the country, informing them of the role played by Guatemalan consulates abroad and the action they may take in consular offices to enforce their rights.

All Guatemalan consulates abroad have been issued instructions about the policy to be followed in assisting and advising fellow nationals, chiefly with regard to keeping their travel documents and visas up to date, and about the type of support with which these offices can provide them.

In the areas bordering Mexico, the Ministry of Labour has begun a broad-based information campaign on the labour rights of migrant workers, including posters and radio announcements. It has also conducted workshops and seminars for labour inspectors, employment counsellors and workers, with the basic objective of familiarizing them with, and ensuring that they respect, migrants' rights and help to publicize them accordingly.

(c) Provision of direct assistance and services:

The Directorate-General for Migration has conducted activities aimed at simplifying and streamlining migration procedures, in an effort to help migrants by preventing them from being surprised or confused by awkward procedures.

The staff of the Directorate-General for Migration has been given the training it needs in order to be able to guide and assist the users of the service appropriately.

The Directorate-General for Migration has established a mechanism for receiving Guatemalan deportees, called the D-102 mechanism, which provides for the evaluation of each person's status and the reasons for his or her deportation; statistics are also being collected for the preparation of a database to establish mechanisms for reintegration into everyday life.

Through its Department of Consular Affairs, the Ministry of Foreign Affairs has established a permanent mechanism for prison visits by Guatemalan consular officers abroad.

The Ministry of Labour and Social Security has opened local offices at the Tecún Uman and El Carmen border posts in the Department of San Marcos in the western part of the country in order to help with monitoring, registration, assistance and protection for workers migrating to Mexico. Arrangements are being made to open a new local office in La Mesilla, Department of Huehuetenango. Assistance to migrants is also being provided at the Guatemalan consulates in Tapachula and Ciudad Hidalgo, both in Chiapas, Mexico, and services are being put into operation at the consulate in Comitán, where, in addition to legal assistance, a social welfare service is provided for those who request it.

The Guatemalan consulate in Korea, for its part, has launched a campaign for the protection of the rights of Guatemalans who have gone to work in Korea.

Guatemala designed and proposed to the CA-4 member countries (Guatemala, El Salvador, Honduras and Nicaragua) a new CA-4 form containing anthropometric data for full identification of the document user. Its purpose is to provide the various consulates of the member countries with better support for dealing with situations of risk.

A joint activity under the coordination of the Ministry of Foreign Affairs through its Department of Consular Affairs and the Guatemalan Institute for Tourism is the design of a project for the establishment of a School for Migration Studies which is expected to be concluded in the short term.

(d) Other measures, including bilateral and multilateral agreements:

The Ministry of Labour and Social Security is currently preparing a survey of workers and production units in the area of Soconusco, Chiapas, in coordination with the Mexican authorities, in order to provide migration and identification facilities to persons from the two countries. To this end, a bilateral commission meets periodically to analyse and discuss the various aspects of this issue.

Negotiations are also under way on an agreement shortly to be concluded between the Ministry of Labour and Social Security of Guatemala and the International Organization for Migration for the purpose of strengthening protection activities for migrants.

In coordination with the Central American countries and Mexico, Guatemala has approached the Government of the United States on the question of ensuring respect for the rights of their respective fellow nationals.

A commission composed of representatives of the Ministries of Foreign Affairs, the Economy and Labour of Guatemala was established to deal with the issue of migrants in Korea. To that end, the Korean authorities and the Korean embassy in Guatemala have been approached on the question of ensuring respect for the rights of Guatemalans working in Korea.

3. Have there been manifestations (how many cases?) of racism, xenophobia and other forms of discrimination against migrants in your country and against your nationals in another country?

As there have been no past or recent incidents of this type, the answer to this question is negative.

4. What steps have been taken in order to ratify the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Labour Organization (ILO) Convention concerning Migration for Employment (Revised), 1949 (No. 97), and the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (No. 143)?

The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the Congress of the Republic on 23 July 1997 and is now in the process of ratification by the Executive with a view to sending Guatemala's instrument of accession to the International Labour Organization.

With regard to the ILO Convention concerning Migration for Employment (Revised), 1949 (No. 97), Guatemala's instrument of accession was deposited with the International Labour Organization on 19 February 1952.

With regard to ILO Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (Supplementary Provisions), the Ministry of Foreign Affairs is studying, and holding consultations on, the text of the Convention prior to ratification.